

Decision of the Tribunal.

Introduction.

1. Under the Statutes of Christ Church Oxford, any seven members of the Governing Body may make complaint to the Senior ex-Censor seeking the removal of the Dean from office for good cause. If it appears to both the Governing Body and the Chapter on the material available that “the complaint is supported by sufficient evidence which could, if proved, constitute good cause for the removal of the Dean from office, [they are jointly to] appoint a tribunal to hear and determine the matter”<sup>1</sup>. Members of the Governing Body made such a complaint dated 17 September 2018 about The Very Revd Prof. Martyn Percy, the present Dean. The then Senior ex-Censor, Prof. John Cartwright, referred the complaint to the Governing Body and the Chapter in accordance with the Statutes. At separate meetings on 3 October 2018 the Governing Body and the Chapter decided that the complaint was supported by sufficient evidence, and I was so appointed to hear and determine it,<sup>2</sup> my appointment being made by letter dated 8 November 2018.
2. The Statutes provide that in these circumstances the Governing Body is to appoint “a solicitor or other suitable person to formulate the charge or charges and to present, or arrange the presentation of, the charges” before the Tribunal: Statute XXXIX.17, and see Statute XXXIX.44. Penningtons Manches were appointed as the “Prosecutor” (as the person so appointed is called in the By-Laws and Regulations, to which I shall refer simply as the “By-Laws”), and charges were formulated and laid against the Dean on 15 March 2019. The Prosecutor alleges that “there is good cause for the Dean’s removal from office” by reason of the matters (whether taken separately or taken cumulatively) in twenty-seven charges set out in a charges document.<sup>3</sup>
3. I held a hearing of the charges over eleven days in June and July 2019. It was held in private, as the Prosecutor and the Dean wished. Both the Prosecutor and the Dean were represented by Leading Counsel. I heard evidence from ten witnesses, read a statement from another witness whom the Prosecutor did not wish to cross-examine, and received

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<sup>1</sup> See Statute XXXIX.42.

<sup>2</sup> I was appointed by the Governing Body and the Chapter to hear and determine the matter alone. The Statutes (XXXIX.43) provide that the Tribunal should comprise a Chairman, “so many members of the Chapter as may be nominated by the Chapter” and “an equivalent number of the Governing Body to be nominated by the Governing Body”. The Chapter declined to make any nomination, and therefore the Governing Body could not do so. The Dean confirmed his consent to me acting alone by a letter dated 29 January 2019.

<sup>3</sup> The charges were amended, without opposition from the Dean, during the hearing before me. The amended charges are annexed to this document. The charge document has 28 paragraphs, but the second paragraph under the first heading does not constitute a separate charge.

extensive documentary evidence.<sup>4</sup> During the proceedings my attention was drawn to disparity in the resources available to the Prosecutor on the one hand and the Dean on the other hand. I did what I could fairly do to accommodate this, and I do not consider that the Dean has been unfairly or materially disadvantaged at the hearing or more generally during the proceedings on that account.

4. I wish to acknowledge the considerable assistance and constant courtesy that I have been afforded by all involved in these proceedings.
5. The only recommendation that I may make is whether or not the Dean should be removed from his office: Statute XXXIX.44. I may not recommend any other penalty. I may recommend that the Dean be removed if I uphold a charges or charges and find “good cause” for dismissal: Statute XXXIX.45. If I do so, then the Senior ex-Censor is to “consult the Governing Body ... and may then dismiss the Dean”: Statute XXXIX.45.
6. The By-Laws (at Appendix IV IIIB 3.16<sup>5</sup>) require that, if a Tribunal decides that one or more of the charges is proved, the Prosecutor and the Dean be allowed to address it on “the question of penalty and/or mitigation before determining any recommendations”. In this ruling, therefore, I am deciding only whether or not I uphold the Prosecutor’s contention that there is good cause, as defined by the Statutes, for the Dean’s removal for office by reason of one or more (and if so, which) of the charges.<sup>6</sup>
7. My decision is to be recorded in a document containing my findings of fact, my reasons for the decision and any recommendation: By-Laws, Appendix IV.IIIB 3.17. This document is to be read together with its six appendices, which are to be regarded as part of the document recording my decision.
  - In appendix 1, I examine the definition of “good cause”, and consider when it may be held proved.
  - In appendix 2, I consider a question about the date by reference to which the charges are to be determined.
  - In appendix 3, I consider mainly the governance of Christ Church.
  - In appendix 4, I examine what duties are owed by a Dean.
  - In appendix 5, I relate, and make findings of fact about, much of the history behind the charges, including in particular exchanges within Christ Church.
  - In appendix 6, I relate, and make findings of fact about, the Dean seeking and obtaining advice from third parties.

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<sup>4</sup> Before the hearing, I also received a number of letters from Canons of the Cathedral and alumni of the College expressing support for the Dean. I appreciate the concerns of their authors, but I consider that it would be wrong to take them into account when deciding whether to uphold the charges, and I have not done so.

<sup>5</sup> This provision applies to a Tribunal hearing a complaint against the Dean: see Statute XXXIX.18.

<sup>6</sup> The Statutes provide that no member of the academic staff may be dismissed “unless the reason for the dismissal may in the circumstances ... reasonably be treated as a sufficient reason for dismissal”: Statute XXXIX.2. The question whether this requirement is satisfied arises if and only if I uphold one or more of the charges. It does not fall for consideration at this stage.

8. It will be necessary to read the appendices in order properly to understand the reasons for my decisions on the charges, which I give below. In them, I explain a number of short-hand expressions that I use, and for convenience I have also appended a short glossary of some of them.
9. The focus of the charges is the Dean's conduct following a request by the Dean to the Salaries Board<sup>7</sup> for a review of his remuneration and that of other Senior College Officers, and his conduct following the consideration by the Governing Body on 13 June 2018 of a paper presented to it by the Board entitled "Review of Salaries Board policies on the remuneration of Senior College Officers" (to which I shall refer as the "general policies review"). It was said in the complaint that his conduct in this regard, and his "general approach to the operation of the business of the [Governing Body] and its committees", have "been so sustained that the [complainants] have lost trust and confidence in the Dean as Head of House and are of the opinion that trust and confidence cannot be re-established". The allegation of a breakdown of trust and confidence and the question whether it had broken down irretrievably are the subject of one of the charges (charge 1); and, if I had upheld the charges, or one or more of them, the question whether, as the Prosecutor alleges, Christ Church's "functioning ... would be likely to be very severely impaired" if the Dean remains in post, might well have been at the heart of any consideration of the appropriate recommendation. However, the central questions with regard to whether to uphold the charges turn on an assessment of the Dean's conduct, rather than on whether any lost trust and confidence can be restored.
10. The Dean, for his part, believes that the complaint and so the charges originate from opposition on the part of a group of senior members of the Governing Body to necessary and desirable reforms of Christ Church's governance and administration that he sought to introduce, which opposition has developed into personal hostility towards him and a determination to find a pretext to remove him from office. That argument too carried with it a risk of diverting the focus from the core questions that I have to decide when assessing the charges, which concern the conduct of the Dean and not the motivation of those who criticise it.
11. The twenty-seven charges against the Dean are grouped under seven headings. For reasons that will become apparent, I shall start with the charges under the second heading, and return to the first charge only after considering the others: it refers to the conduct alleged in other charges.
12. There are two preliminary points. First, the By-Laws at Appendix IV IIIB 3.15 provide that: "It is for the prosecutor to prove the charge or charges. In determining whether the charges or any of them are proved, the [Tribunal] shall consider the evidence and decide whether on

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<sup>7</sup> See Appendix 3, para. 8.

balance it considers that good cause for dismissal within the meaning of [Appendix IV.1.2.1 and 1.2.2 of the By-Law<sup>8</sup>] has been proved in respect of the charges before it”.

13. Secondly, there was no dispute before me that the question for decision is not whether the Prosecutor has proved that the Dean is guilty of the charges at the time of my determination or at the time of the Tribunal’s hearing. The question is whether he has been shown to have been guilty as at an earlier date, but there was disagreement about what earlier date. The Prosecutor contended that, on the correct interpretation of the Statutes, the question is whether he was guilty of them as at the date when the charges were brought, that is, in this case, on 15 March 2019. I disagree: I consider that it is whether he was guilty of them as at 17 September 2018, when the complaint was made; even if I am wrong about that, I would consider that the question is whether he was guilty of them as at 3 October 2018, when the complaint was considered by the Governing Body and the Chapter. I explain my reasons in Appendix 2, but should make it clear that this issue is potentially relevant only to the first charge (and not the others), and in fact the answer to this question would not alter my decision even on the first charge.

The charges in category 2: “Matters concerning the Salaries Board ...”).

14. The nine charges under heading 2 largely concern the correspondence (by way of letters and emails) that the Dean had with the Salaries Board, its Secretary and its members between December 2017 and June 2018.<sup>9</sup> They are introduced as follows: “In about July 2017 the Dean requested that the remuneration of his office should be reviewed as he was entitled to do. The following relate to the manner in which he pursued his request”.
15. Before I come to the individual charges, there are five points to make. First, as I have said, the charges acknowledge that the Dean was entitled to request a review that the remuneration for his office be reviewed, and the Prosecutor was also inclined to acknowledge, as I understood the submissions, that the Dean was entitled to request that his pay be increased. However, it was suggested that the Dean was in breach of duty in that he presented arguments in support of his request. As I explain in Appendix 4,<sup>10</sup> I reject that contention.
16. Secondly, I consider that the Dean was also entitled to ask for an explanation for the Salaries Board’s decisions about his request for a review of his pay, and that, if he received an inadequate response, or what he genuinely and properly considered an inadequate response, to such a request, he was not obliged to accept it without demur and was entitled to express his dissatisfaction and to seek further explanation.<sup>11</sup> In any case, during the

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<sup>8</sup> This definition is materially the same as the definition in Statute XXXIX.5, which I set out in appendix 3, para.1.

<sup>9</sup> There is also a reference in charge 2(4) to emails to Prof. David Hine of 20 July 2017.

<sup>10</sup> See Appendix 4, paras 6 and 7.

<sup>11</sup> The Salaries Board and its Secretary never declined to respond to the Dean’s communications, and so I do not need to consider whether Christ Church (through the Salaries Board or otherwise) was obliged to give an explanation of its decisions. It is strongly arguable that it was: in *Keen v Commerzbank AG*, [2006] ECWA (Civ) 1536, at paras 43, 44 and 45, Mummery LJ said that in general there is an implied mutual duty of trust and

course of the correspondence from December 2017, the Dean was repeatedly invited to make further representations to the Salaries Board: thus, in the letter of 11 January 2011, Prof Lindsey Judson, the Secretary of the Salaries Board, wrote that the Board would take into account the Dean's concerns when reviewing its current policy (and did not suggest that it would consider only concerns already expressed); at both their meetings in January 2018, Prof. Edwin Simpson, a member of the Board, said that the Dean should write about his concerns;<sup>12</sup> in his letter of 22 January 2018, Prof. Simpson invited the Dean to let him know if he wished the Board to consider any of the points in his letter of 17 January 2018; at their meeting with the Dean on 7 March 2018, Mr Hugh Crisp and Dr Ivon Asquith, who were external members of the Board, asked that exchanges continue more calmly; and on 25 May 2018 Prof. Judson invited the Dean's comments on the general policies review.

17. Thirdly, while it was for the Salaries Board to accept or to reject the representations that the Dean made about his remuneration, none of them was so unreasonable as to be unworthy of consideration or such that the Dean can properly be criticised for making it. Indeed, although when writing he did not know about the policies adopted by the Governing Body in 2011 (see below), in some respects, his arguments were in line with them, and the position adopted by the Salaries Board was not. In particular, the 2011 policies provided that there should be periodic reviews to ensure that the Dean's salary was comparable with those of other Heads of House, and that salary should not include housing allowance. The Dean urged that his remuneration be compared with those of other Heads of House and that housing provision be disregarded in doing so.
18. Fourthly, the style of some of the Dean's early letters was, to put it mildly, punchy, and at times unduly didactic, and some of the language was abrasive and caused understandable offence. They detracted from the spirit of collegiality that both a Head of House and the Dean of a Cathedral could reasonably be expected to encourage in their institutions. The external members of the Salaries Board were understandably concerned about what Mr Crisp called the Dean's "approach and tone", and properly called for the exchanges to be conducted more calmly. When this was drawn to his attention, the Dean apologised to Prof. Judson and Prof. Simpson, and after his meeting with Mr Crisp and Dr Asquith on 7 March 2018, the tone and language of the Dean's correspondence changed markedly, and thereafter it cannot, in my judgment, properly be criticised.
19. Finally, it is a curious feature of the correspondence that it was conducted without reference to the Salaries Board's policies of 2011. As Prof. Judson acknowledged to the Tribunal, it was for the Governing Body to make any material changes to the policies, and it was for the Salaries Board to implement them unless and until they were changed. The policies had not

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confidence between employer and employee and the employer is under a duty to preserve the employee's trust and confidence; that, consistent with that duty, the employer ought to supply the employee with the reasons for the exercise of a discretion about additional remuneration; and that this involves a duty to make known to the employee the factors that influenced the decision and the reasons for it. I do not decide whether the Dean is strictly an employee, but his position is at least sufficiently analogous for a similar duty to be owed to the Dean.

<sup>12</sup> See Appendix 5, paras 32ff.



been forgotten: Prof. Judson went to the trouble of amending them in August 2017 after the Dean had contacted Prof. Hine about the remuneration of himself and other Senior College Officers.<sup>13</sup>

20. When did the Dean become aware of the Salaries Board's policies? Prof. Judson gave evidence to the Tribunal that he gave the Dean the policies in hard copy in October 2014, shortly after he (the Dean) took office. There was no evidence that the Dean was provided with a new version of the policies in 2015.<sup>14</sup> However, when he revised them in 2017, Prof. Judson sent them under cover of an email dated 18 September 2017 to all members of the Salaries Board, and in his covering email, he wrote that all members of the Board, apart from Prof. Richard Barker, who had recently been elected to it, already had at least one earlier version of them. In particular, he sent them to the Dean's Personal Assistant, Ms Rachel Perham. Moreover, the document attached to the email was protected with a password, which was sent separately to the Dean in hard copy, and the Dean acknowledged it.
21. I accept Prof. Judson's evidence about this. There can be no credible suggestion that the policies, either in the 2011 version or in the 2017 revision, were kept from the Dean. However, the Dean told the Tribunal that he was unaware that the Salaries Board had any such policies until they were referred to in the draft of the general policies review which he was sent on 25 May 2018. I can well understand that, if the 2011 version of the policies was provided to him when he had just taken up office and was "finding his feet", it did not register with him. As for the provision to him of the 2017 version, the Dean explained to the Tribunal that it was sent when Ms Perham was on leave and she did not send the policies to him (in hard copy or electronically) when she returned on 26 September 2017, and the Dean, being busy with other matters, overlooked the matter.
22. I do find it surprising that, if the Dean learned of the policies only through the draft of the general policies review, his response to it does not reflect that he had previously known nothing of the 2011 policies document, and that he did not ask for a copy of it. In his written statement of evidence, he said that he first had a copy of it only in around January 2019, when he discovered it in a box of papers left in the Deanery by his predecessor. However, it would be no less odd if, knowing of the 2011 policies document, the Dean conducted the correspondence from December 2017 without invoking it in support of his arguments, in particular that his remuneration should be increased so as to be "comparable" with those of other Heads of House and that (given that housing allowances were to be disregarded for other Senior College Officers) the provision of the Deanery housing should not be brought into account when this comparison was made. I therefore conclude that there is no proper basis for rejecting the Dean's evidence about when he learned of the written policies, and I accept it.

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<sup>13</sup> There is no evidence that the change was made in response to the Dean's approach to Prof. Hine. The change was about external linkage. Although the Dean raised questions of both internal linkage and external linkage with Prof. Hine, when Prof. Hine spoke with Prof. Judson, he conveyed the Dean's concerns as being about internal linkage and indeed might not have mentioned external linkage at all: see Appendix 5, para. 4.

<sup>14</sup> See Appendix 3, para. 16.

Charge 2(1): "Without cause, the Dean impugned the work and/or integrity of [Prof. Judson], in particular in his letters to [Prof. Judson] of 14<sup>th</sup> January 2018 and to [Prof. Simpson] of 17<sup>th</sup> January 2018".

23. I conclude that the Dean did not impugn the integrity of Prof. Judson in either letter. The Prosecutor complained that in the letter of 14 January 2018, the Dean used the terms "specious and discriminatory" to describe Prof. Judson's explanation about why housing provision should be brought into account in determining his remuneration. It was said that "specious" connoted dishonesty, in that Prof. Judson was putting forward reasons that he knew were false. I disagree: to my mind, the term was used in its ordinary sense, and it meant that the explanation was superficially attractive but did not withstand examination. It was also said that the description "discriminatory" suggested that Prof. Judson's explanations were unlawful or unethical. Again, I disagree: in context, it meant that housing provision was being taken into account in the case of the Dean, while others in comparable positions were treated differently.
24. The criticism of the letter of 17 January 2018 made in support of this allegation is that the Dean wrote that the Governing Body was unaware that some of the reasoning underlying the Salaries Board's processes "work[ed] with erroneous, problematic and prejudicial assumptions". It was said that this suggested that Prof. Judson, and others, had concealed poor work from the Governing Body. The context of this sentence was that the Dean was advocating principles with regard to remuneration of "fairness, parity and transparency" and that those principles be "owned by Governing Body" in a way that current practices of the Salaries Board were not. I do not understand the Dean to be suggesting that anything had been concealed from the Governing Body, but to be advocating principles of governance that should be adopted in respect of the Board's work. It was not an offensive suggestion.
25. Nothing else in the letters can reasonably be taken as an attack on Prof. Judson's integrity. What of the allegation that without cause the Dean impugned the "work" of Prof. Judson? As I understand the Prosecutor's submissions, this part of the charge is based on the letter of 14 January 2018.
26. The Secretary of the Salaries Board is, of course, a member of the Board, but his "work" in that capacity per se is, as I understand it, the subject of charge 2(2), which I consider below. The other work of the Secretary of the Salaries Board expressly stipulated by the Statutes and By-Laws is his responsibility for convening meetings and preparing the agenda, but the Dean made no criticism of Prof. Judson in that regard. In practice the Secretary also conducted correspondence, and in particular conveyed decisions of the Board to those whom they concerned. I take it that the work of Prof. Judson said to have been impugned by the Dean is, in particular, the explanations which his letters had given the Dean for the decisions of the Board on 1 November 2017, and the focus of the complaint here is, apparently, not on the substance of any point made by the Dean, but on the language that he used.

27. The Prosecutor referred to two criticisms made by the Dean in his letter of 14 January 2018 about what Prof. Judson had written in his letter of 11 January 2018. The first was again the “specious and discriminatory” description, and that the Dean went on to write that the inference of Prof. Judson’s letter was “erroneous (and offensive)”. The language was, I think, more robust than was required for the Dean to present his argument, but I do not consider that, read in its context, it impugned Prof. Judson’s work or, more specifically, his explanation of the reason for the Board’s decision. After all, the letter of 14 January 2018 was written in response to the letter of 11 January 2018, in which Prof. Judson had said that the Board would take the Dean’s comments into account in its planned policy review. It was to be expected that the Dean would be forthright in providing with his comments for the review.

28. The Dean also wrote that, apart from the points about housing provision and rental income, he “struggled to make sense of” Prof. Judson’s letter and the reasoning in it, that he found the Board’s concern about the “ratcheting-up” effect of external linkage “deeply troubling and pejorative”, and that he found the Prof. Judson’s comment about how long the Dean had been in post “rather opaque” and lacking “clarity and method”. Again, there can be no criticism of the substance of the Dean’s points: in the letter of 11 January 2018, Prof. Judson appeared to be stating that, because the Board was uneasy about its policies, it had decided not to apply them when considering the Dean’s request for a review. Even though he was unaware that the policies had been approved by the Governing Body, the Dean was entitled to challenge that approach. He was also entitled to question the relevance of how long he had been in office: the stated purpose of a policy that there be periodic reviews of the Dean’s salary was to ensure that it was comparable with those of other Heads of House, or, in the 2017 version, to consider whether it was. There had been no such “calibration” since 2012, and none was carried out when the present Dean was being appointed. If the aim was to ensure or consider comparability at suitable intervals, the date of the Dean’s appointment was not in point. Prof. Judson’s statement that “the decanal salary was considered adequate at the start of your office” did not recognise that the policy when a new Dean is appointed is not to re-consider whether the remuneration is adequate but to pay the new appointee the salary paid to his or her predecessor, and that the policy was followed when the present Dean was appointed. Again, the language used by the Dean was robust, but he was not impugning, or attacking without cause, the reasoning of Prof. Judson’s letter.

Charge 2(2): “Without cause, the Dean impugned the work of the Board, in particular in his letters to [Prof. Judson] of 14<sup>th</sup> January 2018, 26<sup>th</sup> February 2018, 21<sup>st</sup> May 2018, and 1<sup>st</sup> June 2018, to [Prof. Simpson] of 17<sup>th</sup> January 2018, and to Dr Asquith of 21<sup>st</sup> March 2018”.

29. With regard to the letters of 14 January 2018 and 17 January 2018, the Prosecutor relied on the same points as for charge 2(1), and I have already dealt with them.

30. The passage in the letter of 26 February 2018 on which the Prosecutor particularly relied is where the Dean criticised the “culture of mean-spiritness” that he perceived. As I read it, the letter suggested that the same attitude infected the Salaries Board: the passage referred to the treatment of “[r]equests for recognition in remuneration”. I cannot tell whether



there was any proper basis for the Dean's views: there was no relevant evidence before the Tribunal about that, and I was not asked to make any finding either by the Prosecutor or the Dean about what gave rise to the Dean's complaints. In these circumstances, the Prosecutor has not shown that they were expressed "Without cause". However, the tone of the second part of the letter was intemperate, and it was, to my mind, inappropriate for a head of house so to write to a college committee. That said, the complaints must be read in their context: the second part of the letter is clearly emotionally charged, and the Dean was particularly upset to be told that the Board was considering whether it should take account of housing provision and rental income when determining the decanal remuneration.<sup>15</sup>

31. The criticism of the letter to Dr Asquith of 21 March 2018 is that the Dean said that the Salaries Board had not given "due consideration to the *process* and *reasoning* to determine those salaries now under consideration" (original emphasis). Mr Crisp, to whom a similar letter was sent, told the Tribunal that he did not think it offensive, and he thought that "the idea of improving the remuneration process was a perfectly sensible one", on which the Salaries Board was working. The letter did not impugn that work of the Salaries Board, or do so without cause, but was a proper contribution to it. The sentence isolated for criticism by the Prosecutor was introduced by the words "I respectfully ask that the Salaries Board gives...". It cannot properly be criticised.
32. The only point made by the Prosecutor in support of this charge in relation to the letter of 21 May 2018 is that the Dean repeated previous criticisms of the Board's work. The context of the letter was that the Board was about to consider the draft of the general policies review, and the Dean understandably reminded the Salaries Board of points that he had made in earlier correspondence which he thought remained unanswered. The letter did not impugn the work of the Board.
33. The Prosecutor made the same criticism in relation to the letter of 1 June 2018. This was the response to the general policies review that the Dean was invited to submit: it was proper for him to reiterate his earlier points in the context of a response to the draft review. The only other point about this letter that the Prosecutor advanced was that the Dean wrote that the draft review appeared to contain "quite puzzling and disconcerting assertions, assumptions and equivocations", the Prosecutor's specific objection being that term "equivocations" connoted "deliberate vagueness to conceal the truth". I do not think the criticism to be justified. The word was used in a sentence introducing the detailed observations that the Dean appended to his letter. In its context, the word "equivocations" did not mean that the Board was trying to conceal the truth in the review, but that its vague terminology failed to engage with questions raised by its recommendations. One example might be that it did not explain how "benchmarking against similar Church of England roles" might work: the review said that the Salaries Board

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<sup>15</sup> I do not comment on whether or not the decisions were right. But, to my mind, it is at least understandable that the Dean objected to them, and the correspondence had not really engaged with the arguments that he had presented. He had observed that housing provision is common for Oxford Heads of House, and had been led by his predecessor to understand that rental income had historically been disregarded.

“retains full discretion as to how it does this”. It is not for me to say whether this approach wisely allowed a wide discretion for future decisions or was unhelpfully vague, but I reject the suggestion that, in the context of a response to an invitation to comment (and so implicitly to comment critically) on the review, the use of the word “equivocations” impugned the work of the Salaries Board without cause.

34. I find that the Dean did not impugn the work of the Salaries Board without cause or improperly in the letters of 14 January 2018, 17 January 2018, 21 March 2018, 21 May 2018 or 1 June 2018. The Dean did impugn the work of the Salaries Board in the letter of 26 February 2018, but this outburst falls far short of being immoral, scandalous or disgraceful, and the complaint that the Salaries Board was mean-spirited was isolated: it was not persistent.

Charge 2(3): “Without cause, the Dean impugned the independence of the Board’s external members, in particular in his letter to [Prof. Judson] of 1<sup>st</sup> June 2018”.

35. This charge is founded on the Dean’s response to the general policies review. He raised for consideration whether the external members of the Salaries Board might better be drawn from, or include, persons who were not alumni of Christ Church. He suggested that this might provide more independent views to the Board and would avoid “any personal or rather ad hominem judgments being made”. The Prosecutor alleged that thereby the Dean “acting in conflict of interest, ... questioned, groundlessly, the independence and professionalism of external members of the Salaries Board, and moreover where this very structure had been created on legal advice and implemented with the approval of the Charity Commission”. It was also said that it was not suggested to Mr Crisp, when he gave evidence to the Tribunal, that he, or other external members of the Salaries Board, were not properly independent or professional.

36. I reject these criticisms of the Dean’s letter. In response to the general policies review, the Dean raised for consideration a question about the best composition of the Salaries Board. There is no evidence before the Tribunal about whether the legal advisers or the Charity Commission turned their minds to whether or not it was preferable that all or some of the external members of the Board have no previous connection with the College. It is not for me to take a view about whether this would or would not be preferable: there are arguments in both directions. It suffices to answer the charge that the Dean raised the question without criticising the existing external members of the Board or anything that they had done. It was a proper matter to raise for consideration, and I reject the allegation that, in raising it, the Dean impugned the independence of the external members of the Salaries Board.

Charge 2(4): “The Dean proposed repeatedly and insistently to the Board and/or its members and/or [Prof. Judson] the considerations which he contended should be taken into account in reviewing his remuneration and/or the policy to his remuneration which it/they should adopt, in particular in his letters to [Prof. Judson] of 14<sup>th</sup> January 2018, 26<sup>th</sup> February 2018, 21<sup>st</sup> May 2018 and 1<sup>st</sup> June 2018, to [Prof. Simpson] of 17<sup>th</sup> January 2018, and in his emails to [Prof.Hine] of 20<sup>th</sup> July 2017”.

37. No criticism of the emails of 20 July 2017 was developed by the Prosecutor, nor to my mind could they properly be criticised.
38. The allegation in this charge is that the Dean presented his contentions (i) repeatedly and (ii) insistently. As the Prosecutor made clear, during the hearing before the Tribunal, no criticism was made against the Dean that points that he made should never have been raised or that they did not warrant consideration.
39. I take first the criticism that the Dean repeated his contentions. The Dean's correspondence was indeed protracted, and he reiterated points that he did not think had been answered satisfactorily. In particular, he repeated his arguments about how his remuneration compared with those of other Oxford Heads of House, about the amount of work that his role entailed, about whether the provision of housing at the Deanery should be brought into account, about whether the rental income from the Fell Tower accommodation should be brought into account and about remuneration being set in accordance with principles of fairness and transparency.
40. I consider it understandable that the Dean repeated points that he had already made. In his letter of 19 December 2017, in reply to the Dean's first request for information about how his remuneration was set, Prof. Judson said only that the Board took the view that there was no reason to review his salary at this stage. In his email of 1 November 2017 Prof. Judson had told the Dean that the Board had had a "long and very careful discussion", but he explained in his letter nothing of what had been discussed or why the Board reached its decision. It is not therefore surprising that the Dean pressed again for an explanation in his letter of 20 December 2017.
41. Prof. Judson first gave an explanation for the decision not to review the remuneration in his letter of 11 January 2018. The Dean considered that the reply failed to answer his questions in the letter of 20 December 2017. Certainly, it did not respond to what the Dean had written about the remuneration of the Treasurer and the Steward. It did respond to the Dean's question about external linkage in as much as it explained that the Board was "uneasy" about the current policy. However, it was not clear how this had affected the Board's decision. The policy that the Governing Body had approved was that there be periodic reviews to ensure that the remuneration was comparable with that of other Heads of House, and even in the 2017 version of the policies that had been circulated by Prof. Judson to the members of the Salaries Board (but not put before the Governing Body) consideration was to be given in a review to external linkage.<sup>16</sup> Prof. Judson acknowledged to the Tribunal that, unless and until the Governing Body approved a change in the policy that it had adopted, the role of the Salaries Board was properly to apply it. The letter certainly did not say that the Salaries Board had decided to override the policy because it was uneasy with it.

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<sup>16</sup> See Appendix 3, para. 16.

42. Three of the four reasons that Prof. Judson gave for the decision on 1 November 2017 not to conduct a review of the Dean's remuneration were new, and had not been mentioned at all in Prof. Judson's previous letter: they were that the Dean was provided with housing, that the Dean received rental income from the Fell Tower accommodation, and that the Dean had not been in post "very long" and the "decanal salary was considered appropriate at the start of [his] office". This last point was not explained more fully: it was only in his letter of 20 February 2018 that Prof. Judson said that the Board would not ordinarily conduct a review within less than four years of the appointment of a new Dean.
43. On a natural reading of the letter of the letter of 11 January 2018, Prof. Judson was saying that the Board took its decision on 1 November 2017 for the four reasons that he gave. In his oral evidence Prof. Judson told the Tribunal that he had not intended to convey this: he said that he was only setting out considerations which the Board had mentioned in its discussions, and that in the end the reason for the decision was that the Board concluded that it was thought too soon after the Dean's appointment to review his salary. I accept that that was indeed the real basis for the decision, but Prof. Judson's letter certainly suggested that it was one reason amongst others. (I should make clear that I would reject any suggestion that Prof. Judson was intending to mislead.).
44. In these circumstances, it is understandable that the Dean was dissatisfied with the explanation for the decision that he had been given, and I do not consider that the Dean's letters of 14 January and 17 January 2018 can fairly be criticised for repeating points that had previously been made, in particular for returning to the points about external linkage and for pressing for decisions of the Salaries Board to be transparent and reasoned. I observe that, when Mr Crisp and Dr Asquith met the Dean on 7 March 2018, they did not criticise him for writing too many letters to Profs Judson and Simpson.
45. Nor am I persuaded by this criticism of the Dean's later correspondence. The letter of 26 February 2018 was a response to the letter from Prof. Judson of 20 February 2018 in which the Dean was told that there was to be a review of his remuneration. He briefly summarised some of his previous points, and I do not consider that it was inappropriate to do so. The Dean wrote his letter of 21 May 2018 before the meeting of the Salaries Board on 22 May 2018, from part of which he was to absent himself. He properly reminded Prof. Judson (and through him other members of the Salaries Board) of three points about which he had sought an explanation and to which he had been given no response. In the letter of 1 June 2018, the Dean properly replied to the draft of the general policies review, as he had been invited to do.
46. What of the criticism that the Dean presented his arguments insistently? The language and tone of some of his earlier communications can, to my mind, properly be described as insistent, or indeed aggressive. This criticism can be made of the letter of 26 February 2018 and, to a somewhat lesser extent, the letters of 14 and 17 January 2018. As I have said, after Mr Crisp and Dr Asquith asked him to conduct the exchanges more calmly, the Dean adopted a distinctly more appropriate tone in the correspondence, and I do not think that this criticism is justified with regard to the letters of 21 May 2018 and 1 June 2018. In any

case, those letters were written to respond to the Board's general policies review: it was proper that the Dean should express clearly and, if he saw fit, emphatically his opinions about matters that he thought important.

Charge 2(5): "The Dean repeatedly threatened or intimated that he would or might not carry out part of his role as Dean should his remuneration expectations not be met, in particular in his letters to [Prof. Judson] of 17<sup>th</sup> December 2017 and 21<sup>st</sup> May 2018, and in his letter to [Prof. Simpson] of 31st January 2018".

47. The role of the Dean is specified only in the most general terms, and, even if the governance of Christ Church works well, the work that a Dean could usefully undertake is pretty well unlimited. In the event, in and before 2017, as I conclude, the machinery of governance was not working well, and the Dean had carried some of the workload that might in other circumstances have been done by others, including the Censors.
48. As I understand it, there is no dispute that, from the time of his appointment, the Dean worked long hours in his role.<sup>17</sup> At any rate, I find that he did: indeed the evidence from his appraisal in September 2017 indicated that he was overworking.
49. It is against this background that in the letter of "17th December 2017"<sup>18</sup> the Dean wrote about adjusting his availability, and that a Censor might possibly take his place on international trips, and asking for a reply in time for him to adjust his diary and for his colleagues to do so.<sup>19</sup> I accept the Dean's explanation that his purpose was to drive home his description of how demanding his role was, but his letter did refer to redistributing the work that he was doing. Nevertheless, I do not accept that the Dean could properly be said to have threatened or intimated that he would not carry out "part of his role as Dean": his letter said only that, if his request for a review of his remuneration was refused, the work that he had been undertaking should be re-distributed between senior members of the Governing Body.
50. However, he was saying that he would reduce his work for Christ Church. I cannot accept that the Dean would have been acting in breach of any duty if he had done so, and that is not alleged against him. Nor can I accept that he was acting in breach of any duty in indicating that he might do so: indeed, he would have been open to criticism if he had reduced his work without warning.
51. I have been more exercised about whether it was inappropriate for the Dean to refer to this in a letter to the Salaries Board (or its Secretary). It might be thought that it was not a matter for them to consider at all. But the sting of this is much reduced because in fact the

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<sup>17</sup> This was the evidence of the Dean, and it was not challenged. A witness statement from Mr Lawrie appeared to suggest that the Dean had spare time to take on a number of other commitments, but if this evidence was designed to detract from the Dean's evidence of the hours that he was working, the point was not pursued.

<sup>18</sup> I have found that the letter was probably in fact dated 12 December 2017 (see Appendix 5, para. 15, fn. 13), but that does not matter in considering the charge.

<sup>19</sup> See Appendix 5, para. 17.



Salaries Board did see fit to consider this matter at its next meeting on 19 February 2018 (even though the Dean was no longer minded himself to pursue it for the time being).

52. For similar reasons, I reject the Prosecutor's contention that the Dean was in breach of duty when, in his letter of 31 January 2018, he intimated to Prof. Simpson that he might work "at the level that respects [the Salaries Board's] evaluation [of his role]".

53. In his letter of 21 May 2018, the Dean was responding to the Salaries Board's expressed concerns about his workload (despite the Dean having made it clear that he did not wish his workload reviewed in the foreseeable future) and its proposal that he discuss it with Prof. Cartwright and Prof. Ward. The thrust of his reply was that he preferred that first the review of his salary be completed. This was not a threat, or an intimation that could properly be criticised: he was called on to respond to the Salaries Board's suggestion, and did so.

54. The Prosecutor had a further argument in support of this charge. It alleged (although this had not been foreshadowed in the charges document) that what the Dean wrote in the December 2017 letter was "bluff", inviting this inference because on 20 December 2017 the Dean declined to have his workload reviewed for the foreseeable future. The Dean had apparently had second thoughts about whether he needed to be relieved of some of his work: to my mind, that is an insufficient basis for a finding that the letter of 17 December 2017 was insincere, and I decline to draw the inference that the Prosecutor invited.

Charge 2(6): "The Dean repeatedly threatened inappropriately to take matters of policy concerning the setting of his own remuneration outside Christ Church which would risk bringing it into disrepute, in particular in his letters to [Prof. Judson] of 14<sup>th</sup> January 2018 and 1<sup>st</sup> June 2018 and to [Prof. Simpson] of 17<sup>th</sup> January 2018".

55. In his letter of 14 January 2018 to Prof. Judson, the Dean referred to the possibility of seeking advice from the Charity Commission or from the Advisory, Conciliation and Arbitration Service ("ACAS") to assist to resolve differences that had emerged about his remuneration, but made clear that he hoped that they would be resolved without doing so. In his letter of 17 January 2018 to Prof. Simpson, he referred in more general terms to the possibility of looking to "third parties and external help" to resolve the differences, if they could not be resolved otherwise. In the letter of 1 June 2018, he referred to "relevant bodies and external authorities" and suggested mediation.

56. I consider it unreasonable to interpret these letters as making inappropriate threats. On the contrary, I interpret them as suggestions about how differences might be resolved. I also cannot accept that the steps that the Dean suggested carried any real risk of bringing Christ Church into disrepute: such reputable bodies or a mediator could be expected to deal with the reference in confidence, but even if somehow it became known that advice or assistance had been sought, there is nothing disreputable or embarrassing in seeking to resolve legitimate differences in this way. Certainly, neither Prof. Judson nor Prof. Simpson in their replies to the Dean's letters indicated that they thought it improper to contemplate taking advice from the Charity Commission or ACAS.

57. Again, during the hearing before the Tribunal, the Prosecutor introduced into this charge an allegation of insincerity: that the Dean was making a threat that was “idle”, and, it is to be inferred, made in bad faith. Three points were made to support this allegation of dishonesty. First, it is pointed out that Prof. Judson in his letter of 11 January 2018 had said that he thought that it would be appropriate for the Salaries Board to review its policies, and so the “threat” was unnecessary: although Prof. Judson expressed this opinion, that was not a decision of the Board and the Dean’s arguments were against the Board’s decision, as it had been explained by Prof. Judson. Secondly, it was said that the proper course for the Dean, if he was discontented, was to refer the matters to the Visitor under the Statutes. This course was not available to him.<sup>20</sup> Nor, I add, was a grievance procedure available to him, as it would have been to any other member to the Governing Body. Thirdly, it was suggested that, because the Dean had not in fact referred the differences to the Charity Commission or to ACAS, therefore the threat can be seen to have been “idle”. However, in his letters of 14 and 17 January 2018 the Dean was not threatening to approach others immediately: he was suggesting an approach that might be considered matters reached an impasse. . As for the letter of 1 June 2018, there was no time to go to mediation before the Governing Body meeting of 13 June 2018. I reject the submission that the Dean suggested referring the differences to third parties as an insincere tactic to put pressure on the Salaries Board.

Charge 2(7): “The Dean repeatedly acted in a threatening and bullying manner towards the Board, and especially [Prof. Judson], in particular in his letters to [Prof. Judson] of 17<sup>th</sup> December 2017, 20<sup>th</sup> December 2017, 14<sup>th</sup> January 2018, 26<sup>th</sup> February 2018, 21<sup>st</sup> May 2018, 1<sup>st</sup> June 2018 and 7<sup>th</sup> June 2018, and in his email to [Prof. Judson] of 8<sup>th</sup> March 2018. The Dean’s conduct towards [Prof. Judson] amounted to harassment”.

58. The core of this charge, as it was presented by the Prosecutor, was that the Dean marked his correspondence addressed to Prof. Judson as “confidential” or with similar wordings. Prof. Judson, as he told the Tribunal, was much troubled and stressed when he received the Dean’s letters in December 2017 and January 2018 because he considered himself to be obliged to respect the confidence and unable to discuss with others what he took to be threatening and unjustified attacks upon him. He thought that the Dean headed the two letters of December 2017 “Confidential” in a deliberate attempt to isolate him. He was much relieved when he learned that he could discuss the correspondence with Prof. Simpson in January 2018<sup>21</sup> and with the other members of the Salaries Board in February 2018.

59. Prof. Judson explained to the Tribunal that, from the start of the correspondence with the Dean’s first letter in December 2017, he felt that he was being taken to task in an unfair way, and that the Dean was trying to “wrong-foot” him. I am driven to conclude that he was unduly sensitive in reading this letter as being so critical of him personally, or written with any improper or insincere intent, but his reading of that first letter, it seems to me, coloured

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<sup>20</sup> See Appendix 3, para. 6.

<sup>21</sup> He believed that he could share the correspondence with no one until he received a copy of the Dean’s letter to Prof. Simpson of 17 January 2018, and saw that the Dean had sent the correspondence to Prof. Simpson.

his approach to the subsequent correspondence, and led him to be unduly guarded, rather than open, in his replies to the Dean.

60. I accept Prof. Judson's evidence about how he interpreted the "confidential" markings on the Dean's letters. Indeed, he told Prof. Simpson in early January 2018 that he had received letters so marked and was troubled about whether he could properly show them to other members of the Salaries Board. He also considered discussing them with the external members of the Salaries Board, but decided against doing so, having spoken with Prof. John Cartwright about the tone (but not the content) of the letters.
61. I am unable to accept that the Dean could reasonably have foreseen Prof. Judson's understanding that his letters were intended to be private to the Prof. Judson alone, and were not to be shared with others on the Salaries Board. Still less can I accept the Prosecutor's contention that the Dean so marked them not only knowing that the correspondence would cause distress, but in order to do so. On the contrary, Prof. Judson's understanding of the confidentiality heading was surprising. First, the chain of correspondence began with Prof. Judson's email of 1 November 2017, which he himself had marked "confidential". It was natural that the Dean's response and subsequent correspondence in the chain were so marked, and the Dean might have been open to criticism if he had not respected and acknowledged the confidentiality marking that Prof. Judson had introduced. Secondly, when Mr Lawrie marked his letter to Prof. Judson of 22 September 2017 "confidential", it did not occur to him that this might mean that it was confidential from other members of the Salaries Board. Nor did Prof. Judson so regard it. I cannot understand why Prof. Judson understood differently the similar marking on the Dean's letters. Thirdly, on 8 January 2018, Prof. Judson wrote to the Dean that he proposed to send parts of the letters to the Board, and the Dean registered no surprise and raised no objection. Finally, given that the perceived confidentiality was causing Prof. Judson the anxiety that he described, the obvious course would have been to ask the Dean if he might discuss it with others: when asked by the Tribunal, he was unable to explain why he did not do so.<sup>22</sup>
62. In his letter of 19 December 2017, Prof. Judson, referring to the Dean's workload, wrote, "With your permission, I shall discuss this in the first instance with one or two colleagues in the new year". In his reply, the Dean said that he would not want a review of his workload "at least for the foreseeable future", and did not respond specifically to Prof. Judson's invitation to permit him to discuss it with others. The Prosecutor argued that the Dean thereby reinforced Prof. Judson's understanding that the letter was entirely private. I do not accept that: first, given that the Dean was replying that he did not, after all, want a review, there was no reason for him to reply to the enquiry. Secondly, Prof. Judson was apparently asking permission to discuss Salaries Board's correspondence with others who were not on the Board, and the Dean's failure to respond did not indicate that his letter should not be shared with others. Thirdly, Prof. Judson was asking permission to discuss the Dean's workload, not to share the correspondence: Prof. Judson did not need to mention the letter

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<sup>22</sup> In his letter of 17 January 2018, Prof. Judson wrote that he proposed to copy the Dean's correspondence with him to the other members of the Board. He explained to the Tribunal that he thought this "the best way to see if he objected to their circulation to the Board", but it have been more straightforward to ask the Dean,

in order to do that, and the request for permission was not relevant to the confidential status of the letter.

63. Apart from the complaint that the correspondence was marked “confidential”, the focus of this charge is the language used by the Dean in his letters of 14 January 2018 and 26 February 2018. With regard to the first, I have already rejected the contention that there was an attack on the integrity of Prof. Judson: as I have said, I agree that some of the terminology was unduly confrontational, but I would not criticise the letter of 14 January 2018 more harshly than that.
64. The first part of the letter of 26 February 2018, dealing directly with issues about remuneration, was not expressed offensively. The second part, directed more generally to the culture of Christ Church, was intemperate, but it was not directed against Prof. Judson personally.<sup>23</sup>
65. I do not consider that the Dean was guilty of harassing Prof. Judson: the Prosecutor acknowledged that the Dean was not guilty of harassment in the technical legal sense in which the term is used in the Harassment Act, 1997. Nor do I consider that he harassed Prof. Judson in a looser sense of the word. Nor do I accept the other complaints made in this charge beyond the criticism of the tone and language of some of the Dean’s correspondence that I have already upheld.

Charge 2(8): “The Dean without justification called into question wider aspects of the proper governance of Christ Church and criticised the culture of the institution in particular in his letters to [Prof. Judson] of 26<sup>th</sup> February 2018 and 1<sup>st</sup> June 2018, and in his briefing paper to Blake Morgan ... dated 13<sup>th</sup> February 2018 and his communications to Blake Morgan of April 2018”.

66. I do not consider that the Dean questioned or criticised wider aspects of the Governance or culture of Christ Church in his letter of 1 June 2018, in his briefing paper of 13 February 2018 or his communications to Blake Morgan of April 2018, and ultimately the Prosecutor did not, as I understood the closing submissions, maintain that he did.
67. The second part of the letter of 26 February 2018 did make trenchant criticisms of the culture of the College. The Prosecutor made two points about it. First, it was said to be untrue: as I have said in discussing charge 2(2), there was no relevant evidence before the Tribunal about this, and I am not in a position to judge whether or not the criticisms were true. It was not contended that the Dean was not expressing his genuine views at the time. Secondly, it was said to be inappropriate for the Dean to express his views about this in a letter to the Salaries Board, and to do so in such a highly charged way. I agree, but I do not consider that this put the Dean in breach of any legal duty that he owed to Christ Church.

Charge 2(9): “The Dean sought to by-pass proper governance mechanisms while subject to a conflict of interest by reason of the matters in [the other charges in category 2]”.

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<sup>23</sup> The Prosecutor interpreted the Dean’s complaint that he had had “No thanks, no appreciation, no recognition” as a complaint that Prof. Judson had not thanked him “for doing his job”. I do not so interpret it.



68. I find it difficult to understand the real complaint in this charge. In submissions in support of it, the Prosecutor criticised the Dean both for writing to Prof. Judson and for approaching Prof. Simpson about his remuneration. The first complaint seems to me unwarranted. The evidence before the Tribunal was that it was and is conventional to write to the Secretary of the Salaries Board about decisions of the Board.
69. In as much as the charge is about the Dean approaching Prof. Simpson in January 2018 about the Salaries Board's decision of 1 November 2017 when he was dissatisfied with Prof. Judson's explanations, the Dean did not contravene any procedures that were formally laid down. He approached Prof. Simpson in his capacity of Censor Theologiae, and in that capacity, Prof. Simpson was to chair the meeting of the Board in February 2018. Prof. Simpson gave evidence to the Tribunal that, when the Dean had said to him in their first conversation in January 2018 that he might need to engage with him as Censor Theologiae about his correspondence with Prof. Judson, he encouraged the Dean to write to him rather than to speak: he did not suggest that he should not be involved as Censor Theologiae at all. I do not consider that it would generally be improper for another member of the Governing Body to explain to the Dean why he or she supported a proposal about remuneration if the Dean was to chair the meeting at which the Salaries Board was to consider it. So too here, it was not improper of the Dean to explain his thinking to the Censor Theologiae.
70. If and in so far as the complaint is about the Dean taking legal advice, I shall consider this when I deal with the charges in category 6.

The charges in category 3, "Matters relating to a meeting of the [Governing Body] on 13<sup>th</sup> June 2018 ..."

Charge 3(1): "The Dean's letter to [Ms Helen Etty] of 8<sup>th</sup> June 2018 sought to give and/or gave a misleading impression that:- (a) the Dean had had insufficient time to consider and respond to proposals made in a paper presented to the [Governing Body] by the Board entitled 'Review of Salaries Board policies on the remuneration of Senior College Officers' ... when in fact he had had time to do so; and/or (b) the Dean was willing to accept the Review as it stood if the [Governing Body] wished to do so, when in fact he was not willing to do so, as shown in particular by his email to [Prof. Hine] of 3<sup>rd</sup> July 2018".

71. The Prosecutor contended that the Dean's letter of 8 June 2018 was insincere in that it gave the impression to a reader unfamiliar with his correspondence that he had had no significant time, or inadequate time, to consider the issues in the general policies review whereas he had been corresponding at length about "the very issues", and moreover he had time to submit a two page response to the review with three pages of notes appended.
72. I am not impressed by this argument: of course the Dean had managed to respond to the review with some detailed comments, and his letter did not suggest otherwise. He simply said that he would have liked more time. He explained to the Tribunal that, for example, he could then have developed his observations about stipends in the Church of England. He also made it clear that, in suggesting more time should be allowed, he had in mind "further consultation and conversation, in order to achieve a greater degree of consensus". I



conclude that the Dean had no intention of misleading the Governing Body, and in my judgment, read objectively, the letter was not misleading.

73. Moreover, the Dean's earlier correspondence had not considered all the questions raised by the general policies review, and in particular had not considered the recommendation that had the most important implications for the decanal remuneration: the proposal that it should be set with regard to external linkage with other stipends for Church of England clergy, and the previous policy of setting it by reference to external linkage with the remuneration of other Oxford Heads of House should thereby be diluted.<sup>24</sup> The Dean put forward some comments about this, but, to my mind, a proposal of this nature warranted time for both mature reflection and research, not least because the office of Dean was not confined to the clergy of the Church of England but was open to other clergy of churches in full communion with the Church of England. Further, the general policies review raised other new and potentially important points: for example, whether the Dean should sit on the Salaries Board. While it recommended no change in this regard, the question warranted proper consideration.
74. I add that the Dean attempted to amend the letter of 8 June 2018 and to modify his comment about the time that he had been given. For reasons that were not satisfactorily explained but appeared to be by way of administrative convenience, this was not done. I consider this makes the less convincing the allegation that the Dean was insincere and intent on misleading the Governing Body. The Prosecutor, however, alleged that the Dean wanted to change his initial letter because he knew that it was misleading. I find no convincing basis for that suggestion: comparing the two versions, I infer that the Dean's purpose in revising it was to adopt a more conciliatory tone than in the earlier version.
75. I come to the second limb of this charge: that the Dean's letter was misleading, or intended to be misleading, in that it said that he was willing to accept the review if the Governing Body adopted it. The basis of the allegation is that on 3 July 2018 he said that he would be more relaxed if the purpose of Panel 1 was to consider whether he had had enough time to consider the general policies review.
76. I cannot understand the Prosecutor's reasoning. Even if, as is contended, the Dean's letter of 3 July 2018 was resurrecting his complaint about the time that he had given to respond, it would not mean that he was resiling from his decision to accept the decision of the Governing Body. But in any case, the Dean was not complaining in the email of 3 July 2018 about the time that he had been given: he was only expressing relief that, as he understood it, Panel 1 was examining that narrow question and not examining more far-reaching matters of governance.

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<sup>24</sup> In document 3, it was said that the Dean had been engaged in detailed correspondence with the Salaries Board since December 2017 as to the matters that the Board should take into account in the general policies review. To my mind, this was misleading: the Dean was not writing in December 2017 about what should be taken into account in any general policies review, and indeed it was only in February 2018 that it was decided that there should be a general policies review. Document 3 also, incidentally, thereby took the Dean's early correspondence to be with the Board, contrary to Prof. Judson's view that, because of the confidentiality marking, it was correspondence with him personally.

Charge 3(2): "The Dean sought to give and/or gave the [Governing Body] a misleading impression of his involvement in the work of the Board over the prior months, by reason of the Matters in charge 3(1)(a) ... and by seeking to persuade the Board not to show to the [Governing Body] the Board correspondence ...".

77. I have already concluded that the Dean neither sought to mislead nor did mislead in his letter of 8 June 2018 with regard to the time that he had had to respond to the general policies review. I also reject the complaint that he gave or sought to give a misleading impression about the extent of his involvement in the work of the Salaries Board. His letter did not mention that.

78. It is entirely understandable that the Dean did not want the correspondence to be circulated: it included private information, as was recognised when redactions were made. His response of 7 June 2018 answered the case that it should be circulated before the meeting of the Governing Body, and, in the letter of 8 June 2018, the Salaries Board agreed that it need not be. There is no proper basis for the allegation that the Dean's purpose was to mislead the Governing Body, and I reject it.

The charges in category 4: "Matters concerning the operation of panels of the [Governing Body] know as Panel 1 and Panel 2 ...".

79. Despite the description of this category of the charges, all the allegations concern Panel 1.

Charge 4(1): "The Dean showed a serious lack of awareness and/or judgment in seeking confirmation from [Prof Hine] in his email to [Prof. Hine] of 3<sup>rd</sup> July 2018, that the role of Panel 1 was solely to decide whether the Dean had had sufficient time to consider the [general policies review] before the [Governing Body meeting on 13 June 2018] and to consider the accuracy, range and type of information before the Board".

80. Like charge 3(1)(b), the charge is about the Dean's email to Prof. Hine of 3 July 2018. The Prosecutor did not present any argument in support of the charge in its final submissions to the Tribunal, but it was not withdrawn and so I shall consider it.

81. The circumstances in which the Dean wrote the email of 3 July 2018 were that he still had not received minutes of the meeting of the Governing Body held on 13 June 2018. He had been sent a letter by Ms Helen Etty dated 19 June 2018 which gave him only vague information about the purpose of Panel 1.<sup>25</sup> Then, in a letter of 2 July 2018, Prof. Hine told him that Panel 1 was instructed to consider concerns reflected in documents before the Governing Body, and specifically wrote that, on the one hand, the Dean's letter of 8 June 2018 "suggest[ed] that [he] had had insufficient time to respond to the Board's Review, and express[ed] 'initial concerns' about the 'accuracy, range and type of information' used by the Board in its Review", but document 3 "contradict[ed the Dean's] suggestion that [he] had not been given proper opportunity to engage with the Board's preparation of the Review, and suggest[ed] instead that [he] had been engaging with the Salaries Board over a considerable length of time as to the matters the Board should take into account in its Review".

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<sup>25</sup> See Appendix 5, para. 106.

82. In his reply on 3 July 2018, the Dean wrote nothing about the remit of Panel 1, except to refer to it being “empowered to establish the second panel”. His letter set out what he understood from Prof. Hine’s letter to be the remit of Panel 2. That in itself is enough to answer the charge. However, I consider the Dean’s understanding of Prof. Hine’s letter to be reasonable, and it was also reasonable that he should seek clarification, given the mismatch between Ms Etty’s letter and Prof. Hine’s email, and the vagueness of both. I do not understand how the Dean can properly be said to have shown a lack of judgment in writing his email. Nor can he be criticised for “show[ing] a serious lack of awareness” in view of the very limited information that he had been given about what the Governing Body had decided on 13 June 2018.

Charge 4(2): “The Dean sought to prevent Panel 1 from carrying out the tasks assigned to it by the [Governing Body], and from having a full picture of his prior actions and communications, by seeking to prevent it from seeing the Board Correspondence, in particular by his emails to [Prof. Hine and Mr Lawrie] of 22<sup>nd</sup> June 2018 (17.08 and 17.47), by a telephone discussion with [Prof. Hine] shortly before sending the first of those emails, and by his letter to [Prof. Judson] of 25<sup>th</sup> June 2018”.

Charge 4(3): “The Dean communicated with [Prof. Hine] in ways that led the latter to conclude that the Dean was threatening him and others with legal proceedings, in particular by his email to [Prof Hine] and [Mr Lawrie] of 22<sup>nd</sup> June 2018 at 17.08 and in a telephone discussion with [Prof. Hine] immediately before it was sent, and by his letter to [Prof. Judson] of 25<sup>th</sup> June 2018”.

83. It is convenient to consider charges 4(2) and 4(3) together.

84. Prof. Hine told the Tribunal that neither the email of 22 June 2018 nor the letter of 25 June 2018 made him fear that the Dean would bring legal proceedings, and that he did not understand that the Dean was making threats in the letters. Charge 4(3) depends on the telephone conversation.

85. The background to the exchanges on which the Prosecutor relied is that, as I have explained, by 22 June 2018 the Dean had been given only a vague indication of the purpose and remit of Panel 1. On 22 June 2018, Mr Lawrie had written to him that his correspondence with the Salaries Board had been sent to the members of Panel 1, and that he would be receiving a copy of what had been distributed shortly. Mr Lawrie did not identify what documents had been distributed, the Dean was not told whether they had been redacted and he did not know what, if any, steps had been taken to ensure that the disclosure was strictly confined to the members of Panel 1. On the other hand, it was made clear to the Dean that the correspondence had already been provided by the Salaries Board to Panel 1 and, inferentially, to Mr Lawrie; and, because Mr Lawrie wrote expressly in his capacity as the College’s Data Protection Officer, it would have been apparent that the distribution involved considerations relating to the General Data Protection Regulation.

86. In these circumstances, it is to my mind understandable that the Dean telephoned Prof. Hine and told him that the distribution of the correspondence was liable to cause very significant trouble in the College. Given the position in which he had suddenly been placed by Mr Lawrie’s letter, it would to my mind be unreasonable to criticise him for using the expression that the College would “go nuclear”. I have concluded that he did not threaten to bring

legal proceedings himself, but I would not have criticised him if he had said that he might bring proceedings to restrain the distribution without him first having a chance to consider whether and how the documents should be redacted. The Tribunal was not given any explanation as to why he was not afforded that opportunity.

87. Nor do I criticise the Dean for his email to Prof. Hine and Mr Lawrie sent at 17.08 on 22 June 2018, shortly after the telephone conversation. He did not threaten legal proceedings. On the contrary, he politely asked that the decision to distribute the correspondence be reconsidered, and asked that at least there be an attempt to reach agreement about what should be distributed. I consider the tone of the Dean's email to Prof. Hine at 17.47 on 22 June 2018 was conciliatory: he offered to speak with him, but made it clear that he would understand if Prof. Hine preferred not to do so; and he said that he was concerned with the College's reputation as well as for his own interests. He pointed out that there was not even "an agreed 'corpus' of correspondence to work from, let alone try and redact", and that he was unaware of what he was alleged to have done.
88. In the letter of 25 June 2018, the Dean set out what he perceived to be the duties of the Salaries Board, and stated that he reserved his legal rights. The letter did not threaten legal proceedings, and made no mention of Panel 1 or Prof. Hine. The Dean knew by this time that the correspondence had been released by the Salaries Board to Prof. Hine. It was entirely proper for him to write with a view to preventing the Salaries Board from making further disclosure without giving him prior warning.

The charges in category 5: "Matters concerning the Serious Incident Report to the Charity Commission..."

Charge 5(1): "The Dean showed a serious lack of judgment in not recognising that the subject matter of the SIR merited a SIR and/or in characterising it as a difference of view between senior officers in his email to [Mr Lawrie] of 3<sup>rd</sup> July 2018".

89. I consider that the Dean was understandably surprised that it was reported to the Charity Commission by Mr Lawrie that there had been a "breakdown of trust between the Dean and the Governing Body of the College". I also consider it understandable that the Dean read the heading to the letter as describing the incident as "urgent",<sup>26</sup> and thought it exaggerated to describe the matter as an "urgent serious incident". Nor can he be criticised for giving an assurance that he had no intention of having the College's difficulties publicised: see my discussion of charge 5(2) below. The focus of this charge, I think, was on the last sentence of the Dean's letter, where he referred to a "difference of view between senior officers".
90. I do not criticise the Dean for regarding his differences as being with some senior members of the Governing Body who held office in the College, rather than with the Governing Body as a whole: indeed, the report of Panel 1 to the Governing Body was that trust between the Dean and the Salaries Board had broken down,<sup>27</sup> and assuming the minutes of the meeting to be accurate, when Prof. Hine reported to the Governing Body on 17 July 2018 that a

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<sup>26</sup> See Appendix 5, para. 119, fn 53.

<sup>27</sup> See Appendix 5, para. 117.



Serious Incident Report had been made, he (wrongly) said that it reported a breakdown of trust and confidence between the Dean and *a part of* the Governing Body<sup>28</sup>. I accept that the phrase “difference of view” understates the problem that had arisen, but I do not criticise the Dean for using it, given that, when he sent the email, the Dean, after three weeks, had still not received the minutes of the meeting of 13 June 2018, and had not been given any proper report of the discussion at the meeting or any proper explanation of the purpose or remit of Panel 1.

Charge 5(2): “The Dean wrongly stated in his email to [Mr Lawrie] on 3<sup>rd</sup> July 2018 that he had no intention of making the issues leading to the SIR public, when he had threatened to inform third parties about them, as evidenced by the Dean’s letters of 14 January 2018 to [Prof. Judson], 17 January 2017 to [Prof. Simpson] and 1 June 2018 to [Prof. Judson]. It has become known since the complaint and in the course of this Tribunal process that the Dean informed Sam Younger about them in November 2017”.

91. There are two answers to this charge. First, it does not accurately reflect what the Dean wrote in his letter of 3 July 2018: he did not write that he had no intention of making public the issues leading to the SIR, but that he had no intention of making public the subject matter of the SIR, that is to say that he had tense relations with the Governing Body.
92. Secondly, in the letters of 14 January 2018, 17 January 2018 and 1 June 2018, the Dean did not threaten to make public his differences with the Salaries Board, but suggested taking advice or seeking help from third parties such as the Charity Commission, the Advisory, Conciliation and Arbitration Service or a mediator. It was implicit that, if this were done, it would be on a confidential basis. Similarly, the Dean had sought advice from Mr Younger on a confidential basis. These suggestions are not inconsistent with the assurance that he gave in the letter of 3 July 2018.

The charges in category 6: “Matters concerning Blake Morgan”.

93. The Prosecutor alleged in respect of the matters that are the subject of this category of charges that the Dean was in breach of a duty not to disclose Christ Church’s confidential information. The charges do not refer to any specific information that was so disclosed, and the Prosecutor did not identify any particular information that the Dean wrongly disclosed to Blake Morgan or to Mr Younger, nor was the Dean asked about any particular disclosure when he was cross-examined before the Tribunal. I am unable to accept that the Dean is guilty of any breach of this duty.

Charge 6(1): “The Dean obtained legal advice from Blake Morgan at least partly in relation to his own personal interests, namely the level of remuneration, in and around the period from February to April 2018, yet procured Christ Church to pay for the entirety of the advice”.

94. It should be said at the outset with regard to this charge that the Prosecutor, as I was expressly told, made no allegation that the Dean acted dishonestly in taking Blake Morgan’s advice or in having Christ Church pay for it: I have seen no basis on which I could properly have made a finding of dishonesty.

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<sup>28</sup> See Appendix 5, para. 125.



95. The Dean's position is that he initially sought advice from Blake Morgan (i) for himself in respect of his own case for a pay review, and (ii) in respect of College governance matters; that Blake Morgan refused to give advice to him about the former "micro" issues<sup>29</sup> because Christ Church were their clients and they would have had a conflict of interest, and therefore Blake Morgan did not charge for any advice to the Dean about the micro issues; that Mr Ben Brice of Blake Morgan gave advice only about the other "macro" issues, namely (i) advice in relation to published codes and guidance applicable to Christ Church, and (ii) advice about the interpretation of the Statutes with regard to the tenure of the Secretary of the Salaries Board; and that, contrary to the Dean's expectation, Blake Morgan charged for Mr Brice's advice.
96. The first question therefore is whether the Dean was entitled, that is to say had authority by virtue of his office, to obtain advice on behalf of Christ Church if he considered that he should do so in order to carry out his role as Dean. (Obviously, he personally was entitled to seek advice for himself in relation to his case for a pay review). Mr Lawrie told the Tribunal that, if an individual member of the Governing Body needs legal advice to assist in College duties, the usual practice is to discuss it with senior colleagues. I do not doubt that. However, the Dean is charged with responsibility for "order and discipline and the general superintendence of" Christ Church. It seems to me that, in order to discharge that responsibility, a Dean might well need to take legal and other advice on occasions, and I consider that he has implicit authority to do so. I see no reason to conclude that his authority was restricted to taking advice in accordance with the usual procedures. Further, I can envisage circumstances (perhaps unusual, but not far-fetched) in which it would be proper for a Dean to take legal advice in order to discharge his duties and to keep it confidential from others within Christ Church that he has done so. Certainly, the Prosecutor has not established that a Dean does not have such authority, and Mr Lawrie accepted that he could probably envisage a circumstance in which it would be proper for a Dean "to take legal advice on his own".
97. The next question is whether the Dean, in consulting Blake Morgan, was exercising his authority to seek advice on behalf of Christ Church in order to carry out his role as Dean. Certainly, Blake Morgan took him to be doing so: otherwise, they would not have given advice in relation to Christ Church's affairs because of their conflict of interest. The Dean's evidence to the Tribunal made it clear that he regarded himself as so acting. Further, Dr Young,<sup>30</sup> as the Senior Censor, authorised payment of the invoice from Blake Morgan, presumably because he understood that the Dean was authorised to seek advice on behalf of Christ Church. No case was advanced by the Prosecutor that Dr Young was misled by the Dean or authorised payment of the invoice on the basis of a misunderstanding of what it was for.<sup>31</sup> Both Prof. Simpson and Prof. Judson saw a copy of the invoice after it had been

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<sup>29</sup> The Dean dubbed the questions concerning his own case for a pay review about which he sought advice as "micro issues", and the questions about Christ Church governance matters as "macro issues". I adopt these terms as convenient labels.

<sup>30</sup> I shall so refer to the then Senior Censor, although his title is now Professor Brian Young.

<sup>31</sup> The Prosecutor submitted that the Senior Censor was asked to arrange payment in what were termed "suspicious and unbusinesslike circumstances". Given that dishonesty is not alleged, the point of this observation is not clear to me, but in any case I reject it and any innuendo behind it: see Appendix 6, para. 27.

sent to Dr Young, and neither said that the Dean did not have authority to consult a solicitor on behalf of the College.

98. This leads to the question whether the Dean was in fact seeking advice for the purpose of Christ Church's good governance, and so to assist him to carry out the duties of his office. It seems clear to me that a Dean might properly decide that he should for this purpose seek advice about either or both of the macro questions: about the meaning of the By-Laws governing the tenure of the Secretary of the Salaries Board, and about what recognised codes and guidance concerning remuneration and procedures relating thereto applied to Christ Church and how they should be implemented. Further, the Dean did in fact pass on the guidance that he was given by Blake Morgan on 20 February 2018 about both these matters to others within Christ Church's governance to whom, on the face of it, the advice might well have been useful: the advice about the tenure to the Censors by email of 2 March 2018, and the advice to about codes and guidance to Dr Asquith and Mr Crisp in his letters of 21 March 2018.
99. The Prosecutor alleged that the Dean's purpose in obtaining legal advice was at least partly to find support for his argument that he should be paid more, and the submissions here concentrated on the Dean's purpose in taking advice about the tenure of the Secretary of the Salaries Board. It was alleged that the Dean wanted to remove Prof. Judson from his position because he thought that this would improve his prospects of increasing his remuneration. In support of this contention, it was pointed out that, in July 2017, the Dean had raised questions about remuneration through Prof. Hine because he thought that Prof. Judson would be unsympathetic. However, by the time that the Dean spoke to Blake Morgan, Prof. Judson had let the Dean know that he thought a policy review was appropriate; and by the time that he was advised by Mr Brice, the Salaries Board had agreed that there should be such a review, followed by a review of the Dean's own remuneration, although there was no evidence before the Tribunal whether the Dean had been informed of this before he spoke with Mr Brice. Further, the Dean had become aware that the Censors were concerned about Prof. Judson's continuing tenure as the Secretary of the Salaries Board. In my judgment, the Prosecutor has not discharged the burden of proving that the Dean's purpose in seeking this advice was to improve his prospects of being paid more or otherwise to advance his personal interests.
100. I do not doubt that the Dean's concerns about the Salaries Board's procedures and compliance with good practice were occasioned by, or at least much aggravated by, how his own request had been handled, which he considered unsatisfactory. It does not follow that his purpose in seeking advice about published guidance concerning proper procedures was to advance his own claim, and the Prosecutor did not argue in its final submissions to the Tribunal that the Dean sought advice about published guidance for this reason. Given that, by the time that the Dean sought and Mr Brice gave advice, there was every prospect of a review of procedures, I consider that it was right not to do so.
101. I therefore conclude that the Dean sought the advice in respect of the macro issues for the purposes of good governance of Christ Church. However, that is not the end of the matter, because the Dean was acting as a fiduciary for Christ Church in seeking advice for Christ

Church. The Dean did not argue otherwise, and was right not to do so: apart from his position as trustee, on his own case, he was Christ Church's agent in seeking advice for the College. If he was thereby putting himself in a position in which his personal interest and his duties to Christ Church did or might conflict, then, absent disclosure, he was in breach of his fiduciary duty.

102. With regard to the advice about the tenure of the Secretary of the Salaries Board, in the Trinity Term 2017, as I assume, Prof. Judson had been elected Secretary of the Board for the academic year 2017/2018, that is to say until 31 July 2018.<sup>32</sup> Whatever the proper interpretation of the By-Laws, he could only continue in office after that if the Governing Body so decided at its meeting in the eighth week of Trinity Term 2018. The Dean contended that he had no personal interest in whether Prof. Judson was re-elected because the Salaries Board had decided on 19 February 2018, before Mr Brice advised on 20 February 2018, that, after the equal value review and the general policies review had been concluded, the Dean's salary should be reviewed in Trinity Term 2018, that is to say while Prof. Judson would on any view still be the Secretary of the Board.
103. As I have said, I cannot tell whether the Dean knew of this decision before he spoke with Mr Brice. He had not, of course, been at the discussion on 19 February 2018. He was advised of the decision by Prof. Judson's letter of 20 February 2018, but there was no evidence whether he received it before or after his conversation with Mr Brice. Assuming in the Dean's favour (the burden of proof always being upon the Prosecutor), that he had received it, nevertheless I am not persuaded by the Dean's contention, and I find it the less attractive because the Dean had sought advice about this question before the decision of 19 February 2018: his paper briefing Blake Morgan referred to it. But leaving this aside, it was clearly possible (i) that the reviews would not run to the timetable envisaged by the Board on 19 February 2018, and (ii) a new Secretary of the Salaries Board would be more sympathetic to the Dean's case for more remuneration than Prof. Judson had been. This possibility was, of course, far from certain, and indeed, to my mind, rather unlikely, but it was a possibility and not an unrealistic one. To put it in terms of a legal test about when a fiduciary has a conflict of interests,<sup>33</sup> a reasonable man looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict: it was not merely a situation that might result in a conflict only in some conceivable possibility in events that no reasonable person would contemplate as a sensible possibility.
104. With regard to the advice about published guidance, I have reached a different conclusion. The Dean had advocated that the Salaries Board comply more closely with published guidance than he perceived them to have been doing, but that does not mean that he had any personal interest in them doing so. The Prosecutor did not identify any particular part of the guidance that would give rise to such an interest.
105. The Dean did not disclose to Christ Church that he was taking Blake Morgan's advice about the tenure of the Secretary of the Salaries Board. Therefore, I conclude, he was in breach of his fiduciary duty. However, in my judgment, this failure falls far short of being "good

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<sup>32</sup> See Appendix 3, para. 9.

<sup>33</sup> See Appendix 4, para. 5.

cause" for his removal from office. These considerations seem to me important to this assessment:

- First, as I have found, the Dean's purpose in obtaining the advice was not to advance his own (pecuniary or other) interest.
- Secondly, the Dean did not appreciate that he had a conflict of interest in taking the advice, and the failure was not deliberate. Of course, a fiduciary duty of this kind is strict, and his failure to appreciate this is not relevant to whether he was in breach of his duty. But it mitigates the culpability of the breach. The question whether or not a possible advantage is sufficient to constitute a conflict of interest is one of fact and degree, and this was not a case in which the Dean's interest was obvious.
- Thirdly, Blake Morgan's invoice was stated to be "for the period to 30 April 2018 to include advice provided in relation to best practice guidance of regulators in relation to manner by which salary reviews might be conducted".<sup>34</sup> The advice that Mr Brice gave on 20 February 2018 was mainly about the published guidance. There was only a brief discussion about the interpretation of the By-Laws concerning the Secretary of the Salaries Board. The Prosecutor has not shown that this brief discussion was reflected in the fee charged by Blake Morgan and paid by Christ Church being more than it otherwise would have been.

Charge 6(2): "The Dean wrongly represented that the advice he had obtained from Blake Morgan related only to an interpretation of Christ Church's Statutes and by-laws, when it did not, and that he had taken advice in the interests of good governance when he had not. This is evidenced in his letter of 7<sup>th</sup> June 2018 to [Prof. Judson]".

Charge 6(3): "The Dean failed to comply with a request from [Prof. Judson] in the latter's letter to him of 8<sup>th</sup> June 2018, made in light of the Dean's assertion that the advice taken on behalf of Christ Church, that the Dean send him a copy of the questions which the Dean had put to Blake Morgan, and the advice which he had received as a result".

106. It is convenient to consider these charges together. In his letter of 5 June 2018, Prof. Judson responded to the Dean's letter of 1 June 2018, in which he had said that he had had no advocacy or real support in his exchanges with the Salaries Board. Prof. Judson wrote that he and Prof. Simpson understood that he had "in fact recently taken formal legal advice in connection with matters pertaining to the Policy Review, which was paid for by the College". The Dean replied on 7 June 2018 that he had not taken legal advice about the general policies review: that much was accurate. However, he went on to describe the advice as relating to "an interpretation of [Christ Church's] Statutes and by-laws": that was incomplete, and so misleading. He then said that he had taken the advice in the interest of the good governance of Christ Church, and, as I conclude, the Prosecutor has not shown otherwise.

107. Prof. Judson replied on 8 June 2018 that Blake Morgan's invoice referred to "advice provided in relation to best practice guidance of regulators in relation to manner by which salary reviews might be conducted". This was correct, but it was not given specifically in relation

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<sup>34</sup> See Appendix 6, para. 28. See too Blake Morgan's attendance note, Appendix 6, para. 30.



to the general policies review. He also requested a copy of the advice and the questions asked of Blake Morgan.

108. The reply of the Dean was therefore misleading to the extent that I have explained. However, I reject any suggestion that the Dean was being dishonest or intending to mislead. I see no reason for him to have sought to mislead in this way. He was explaining his statement on 1 June 2018 that he had had no advocacy or other support in responding to the general policies review. Had his letter of 7 June 2018 also mentioned that he had had advice about published guidance, it would not have compromised his point about not having support in relation to the general policies review. Nor, as I conclude, would it have compromised his statement that he had taken advice in the interest of good governance.
109. In these circumstances, I do not consider that the error amounted to a breach of the Dean's duties or that it constitutes good cause for his dismissal.
110. The Dean could not send Prof. Judson a copy of any advice given by Blake Morgan: it was given orally. Nor had Blake Morgan been asked specific questions. The briefing paper had referred in the last paragraph to the Salaries Board failing to "comply with the latest [Higher Education] and charity sector codes, requiring the Board to publish in [the] annual accounts, methods and reasoning for determining the remuneration of Senior Office-holders ...",<sup>35</sup> but the Prosecutor did not convincingly identify any duty on the Dean to supply documents of this kind. I am unable to do so,<sup>36</sup>. The point that the Prosecutor really sought to make by reference to this complaint was that the Dean's failure to respond to Prof. Judson's request evidences that he was trying to hide his improper conduct in taking advice from Blake Morgan. For reasons that I have explained, I reject that contention.

Charge 6(4): "In his briefing paper to Blake Morgan of 13<sup>th</sup> February 2018 ('Briefing Paper'), the Dean did not present an even handed briefing about the remuneration policies which Christ Church should adopt in that:- (a) it focussed principally and/or disproportionately on the issue of the Dean's remuneration; (b) contrary to paragraph 1 of the Briefing Paper, the Dean did not mention what he termed the 'gender pay-gap' until his letter to [Prof. Judson] of 14<sup>th</sup> January 2018; (c) contrary to paragraph 2 of the Briefing Paper, the Board did consider the linkage between the salaries of the Treasurer, the Steward and the Director of Development, and gave consideration to the Treasurer's salary, as was set out in the Board's minutes of 1<sup>st</sup> November 2017 and as was referred to in [Prof. Judson's] email to the Dean of 1<sup>st</sup> November 2017; (d) in paragraph 3 of the Briefing Paper the Dean stated that he had 'discovered' that on 1st November 2017 the Board had relied on information which he termed 'specious' (about the pay of the Archbishop of Canterbury and of the Church Commissioners' Head of Investment), thereby suggesting that this information was in some way hidden, when in fact it was recorded in the minutes of the meeting; (e) in paragraph 6 of the Briefing Paper the Dean stated that he had had no reply to his letter to [Prof. Judson] of 20<sup>th</sup> December 2017 asking for an explanation of his remuneration being as he put it 'below par' and that

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<sup>35</sup> I do not understand Prof. Judson's request to be directed to the advice about the interpretation of the Statutes and By-Laws, which of course concerned the tenure of the Secretary of the Salaries Board.

<sup>36</sup> A fiduciary is generally under an obligation to make full disclosure when he is in negotiations to conclude a deal with his principal (see Appendix 4, para. 3), but I do not think that this principle can be extended to cover this case, and the Prosecutor did not rely upon a duty of this kind.



he had therefore had to re-send the letter in early January, without explaining in the Briefing Paper that his letter of 20<sup>th</sup> December had stated, 'I would be grateful for a reply next month'; (f) contrary to paragraph 8 of the Briefing Paper, the Board's taking account of the provision of accommodation to the Dean did not amount to 'a means of taxing or reducing' his stipend, nor did [Prof. Judson's] letter to the Dean of 11<sup>th</sup> January 2018 say this".

111. The complaints about the briefing paper are all directed to its first nine paragraphs, that is to say to the part of the paper in which the Dean set out information in respect of the advice that he was seeking in a personal capacity, the so-called micro issues. The Dean owed no duty to Christ Church about the terms in which he instructed solicitors in relation to advice that he sought in a personal capacity.

112. Further, the paper (or those paragraphs to which the charge refers) did not purport to present a briefing about the remuneration *policies* which Christ Church should adopt, but to be a history of the response to his own request for a review of his remuneration. The only one of these complaints that might be said to be about a policy is the last, but it is clear that the Dean was not suggesting that the tax of this kind was actually imposed on his stipend, or a reduction was made from an agreed amount of stipend: he was adopting a readily understood figure of speech to make his point.

Charge 6(5): "The Dean's note to Sam Younger, attached to the Dean's email of 23rd April 2018 to Geraldine Johnson and Brian Young, did not present an even-handed briefing about the remuneration policies which Christ Church should adopt, in that it criticised the Board but did not mention that the Board was engaged in a review of the Dean's own remuneration or that the Dean had been told by two external members of the Board that they thought that he was putting inappropriate pressure on members of the Board".

113. In submissions, the Prosecutor did not pursue any complaint about the note to Mr Younger, but instead made various complaints about the email under cover of which the note was sent to the Censors, including an allegation that the Dean's email of 23 April 2018 was designed to persuade them to take action to remove Prof. Judson as Secretary of the Salaries Board, a complaint that he set out the risks that he saw in Prof. Judson remaining in the office, and a complaint about the Dean inserting additional words into Mr Younger's email. None of these complaints are covered by this (or any) charge against the Dean. In these circumstances, I can only uphold the Dean's submission that the note to Mr Younger simply reflected the views and concerns that he then had.

Charge 6(6): "In seeking external advice from Blake Morgan, and from Sam Younger, in particular about the Dean's contention (in the final paragraph of his note to Sam Younger) that the Board Secretary 'will need to be replaced at the end of the academic year', the Dean was acting without authority from the [Governing Body], in particular given that the advice of Christ Church's law tutors had been obtained on this issue and they had given views which were not to the Dean's satisfaction, and given further that the matters which the Dean raised (if they remained contentious) were the proper subject of consideration by Christ Church's Statutes and By-Laws Committee and/or General Purposes and Strategy Committee and not for determination by the Dean".

114. The Prosecutor's complaint is that the Dean ought not to have discussed his concerns about the length of Prof. Judson's tenure with Mr Younger. I have not identified any express or implied prohibition on the Dean seeking guidance of this kind, and, in my judgment, he did not act in breach of duty or improperly in doing so. Nor, in view of the delicacy of the question, do I consider it surprising that he saw benefit in taking discreet counsel from one of Mr Younger's experience, rather than, or at least before, raising it formally within the College. The fact that the law tutors of the College had opined on the interpretation of the Statutes (but not, as far as the evidence goes, on any guidance as to good practice) does not affect this. I have seen nothing that indicates that the Dean ever supposed or suggested that Prof. Judson's tenure was for his own determination.

The charges in category 7: "Matters concerning the letter from the Dean to members of the [Governing Body] of 21<sup>st</sup> August 2018 ('the Open Letter')".

Charge 7(1): "By the Open Letter the Dean sought to circumvent and/or circumvented, the procedure which the [Governing Body] had put in place to deal with the governance concerns which had arisen, in that the [Governing Body] had created Panel 2 (through Panel 1) to mediate with the Dean, yet by the Open Letter the Dean addressed the entire [Governing Body] directly on how these governance concerns should be resolved".

115. Neither the Dean nor Panel 2 nor the Governing Body agreed that the mediation should be the sole means of resolving the differences between the Dean and members of the Governing Body. The mediation agreement did not provide that it should be, and members of Panel 2 did not treat it as such. Thus, first, soon after Panel 2 was established and charged with conducting the mediation, Profs Hine and Foot were in communication with the Bishop of Oxford.<sup>37</sup> Later, after the day of mediation, Mr Lawrie visited the Dean with Dr Young on 17 August 2018 to persuade him that it was in the interests of the College that he should leave.<sup>38</sup> After careful consideration and with the knowledge and assistance of the College's legal advisers, Mr Lawrie was properly seeking a resolution of the situation: the mediation was not seen as the exclusive means through which this could properly be done.
116. In these circumstances, there was no reason that the Dean should not write to the members of Governing Body. The letter was not designed to hamper the mediation: the Dean did not compromise its confidential nature, and he made clear that he was fully committed to it.

Charge 7(2): "By the Open Letter the Dean sought to minimise, and/or minimised, especially in the minds of those (being the majority of the [Governing Body]) who had not read the Board Correspondence, the seriousness of the issues of loss of trust and confidence arising from his actions".

Charge 7(3): "By the Open Letter, the Dean showed a lack of awareness of and/or judgment about the seriousness of the issues of loss of trust and confidence arising from his actions".

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<sup>37</sup> See Appendix 5, para. 126ff.

<sup>38</sup> See Appendix 5, para. 135.

Charge 7(4): “The Dean showed a lack of awareness of and/or judgement of the damage which the Open Letter might do to the [Governing Body’s] attempts to respect the confidentiality of the Board Correspondence”.

117. I take these three charges together. The starting points are (i) that the Dean was not obliged to resign his office, and (ii) that the Dean was entitled, for reasons that I have explained, to write to the members of the Governing Body. Given this, I cannot understand how the terms of the letter that he wrote offended against any duty that the Dean owed, and the wording of the charges does nothing to assist me to identify a breach of duty. Nor can I understand how the Dean can be said to be guilty of culpable behaviour, still less immoral, scandalous or disgraceful conduct, in writing as he did; nor how a lack of awareness or judgment of the kind alleged represents a failure or persistent refusal or neglect or inability of the kind that might amount to good cause for his dismissal.
118. I add only brief comments. I find it particularly difficult to grasp the thrust of charge 7(2). Whose trust and confidence is being referred to? If it is the trust and confidence of those who had not read the correspondence, they were best placed to assess for themselves whether, and if so how seriously, they had lost trust and confidence in the Dean. If it is the trust and confidence of those who had read the correspondence, that is to say the members of the Salaries Board and the members of Panel 2, they would, presumably, have been able to convey their views to others.
119. With regard to charges 7(3), it seems to me unrealistic to think that the Dean could have said more than he did in the letter to acknowledge the problems facing Christ Church and his responsibility for them.
120. As for charge 7(4), the Open Letter did not create or materially aggravate the dilemma faced by the members of the Governing Body who had not read the correspondence. Had the letter not been written, the Governing Body, including those members who had not read the correspondence, would still have had to decide on how to proceed, either relying upon what they were told by the Dean and Panel 2 without reading the correspondence themselves, or having insisted on seeing it before making a decision.

#### Charge 1: “Trust and Confidence”.

There is only one charge under the first heading, “Trust and confidence”. It is “By reason of each of the Matters under headings 2-7 ... trust and confidence in the Dean has been irretrievably lost and/or has irretrievably broken down, as has the working relationship between the Dean and the Governing Body ...”.

121. The first charge is that there is good cause for the Dean to be removed from office because trust and confidence in him and his working relationship with the Governing Body has been lost and broken down irretrievably, as a result of the Dean’s conduct. So worded, it is not presented as a charge that the good cause is the Dean’s conduct that led to this state of affairs. The distinction might appear to be a fine one, but it is important, as I explain in Appendix 1 at paragraph 5 to 7: the loss and breakdown in themselves, though said to result

from the Dean's conduct, cannot in my judgment constitute "good cause" for his removal from office on the proper interpretation of Statute XXXIX.

122. I have therefore asked myself whether, the exact wording of the charge notwithstanding, I should treat it as being, in substance, directed to the Dean's conduct, coupled with an allegation that it is the more culpable because of its consequences. I have considered this anxiously, not least because of evidence before the Tribunal about the problems that Christ Church will face in terms of governance and administration if the Dean remains in office. For example, Prof. Simpson gave evidence to the Tribunal that he anticipates that, if the Dean remains in office and returns to his duties, "the majority, if not all, of the members of the Governing Body would refuse to be chaired by him at any meeting of the Governing Body or its Committees, and would walk out of such meetings". While I find it difficult to believe that members of the Governing Body would so repudiate their duties as charitable trustees, the governance of Christ Church, I readily accept, is likely to be difficult for some considerable time.
123. Nevertheless, I do not consider it would be right to take it upon myself so to recast the first charge. I was not invited to do so by the Prosecutor, and the Dean has answered the charge in the terms in which it was presented. It is a principle that is core to the disciplinary structure laid down in Christ Church's Statutes that members of the academic staff, including the Dean, who face allegations or complaints, have them tested though formulated charges determined by a prosecutor. Statute XXXIX and any By-Law made under it are to be interpreted to "apply the principles of justice and fairness", and, even assuming that I have power to do so, I do not consider that it would be just or fair to the Dean so to recast charge 1. Further, it is not easy to see how it can be recast in terms that would not impermissibly duplicate the other charges.
124. This is sufficient reason to reject the first charge, and I do so. That said, I shall make these further observations. By 19 September and 3 October 2018, a significant part of the Governing Body had clearly lost confidence in the Dean, and considered it in the interests of the College that he be replaced. Despite the strongly held views of some members of the Governing Body, I cannot tell from the evidence how widely this view was shared. Prof. Nigel Biggar, the Regius Professor of Moral and Pastoral Theology, told the Tribunal that he thought that, if the ruling is in favour of the Dean, this will carry weight with many on the Governing Body who now oppose him, and will contribute significantly to restoring Christ Church to proper governance under him. The Prosecutor has not shown on the evidence that by 19 September or by 3 October 2018 trust and confidence had broken down irretrievably.
125. However that might be, there is another question: whether those on the Governing Body who had lost all trust and confidence in the Dean had done so as a result of the conduct alleged against him in the other charges. I accept that this was the reason in some cases: Mr Lawrie was much influenced by the Dean's dealings with Blake Morgan, although that was apparently because he had concluded from what he had learned that the Dean had been dishonest, which the Prosecutor did not allege. For Prof. Foot, it was the dealings with Blake Morgan and the Dean's correspondence with the Salaries Board that determined her



thinking. However, apparently a significant number of senior members of the Governing Body had lost trust and confidence in the Dean by the end of Michaelmas Term 2017 or January 2018 and before the conduct which is the subject of all or most of the charges had occurred. I detect little or no such trust or confidence in the exchanges between the ex-Censors about the “job description” for the Censors and the post of Academic Registrar in October 2017.<sup>39</sup> The emails of Prof. Hine to Prof. Simpson in November 2018<sup>40</sup> and of Mr Sternberg<sup>41</sup> show distinct hostility. (I say nothing about whether or not these members of the Governing Body were properly critical of the Dean in respect of the issues that prompted the emails, and reasonably annoyed with him.) Emails between close colleagues are sometimes couched in colourful language and are not always to be taken literally. Prof. Hine told the Tribunal, and I accept, that in Michaelmas Term 2017 he was increasingly exasperated by number of issues, and I infer that others were as well. However, making all allowance for these considerations, clearly some on the Governing Body had lost trust and confidence in the Dean and working relationships had been damaged before the conduct with which the Dean is charged under headings 2 to 7 of the charges document, and not as a result of it.

126. It might be said that the trust and confidence were not irremediably lost before the correspondence with the Salaries Board and the other conduct that is the subject of the charges. In his email of 26 July 2018 and in his evidence to the Tribunal, Prof. Simpson said that the Salaries Board correspondence that was the “last straw” and “brought [him] ultimately to [the] view” that the Dean might be irredeemable. Against that, however, by around the start of Hilary Term 2018 Prof. Simpson (who had not by then seen the letters that the Dean had written to Prof. Judson in December 2017, and knew only that Prof. Judson was for some reason troubled by them) so distrusted the Dean that he secretly recorded their conversation in the Deanery.
127. I could not conclude from the evidence before the Tribunal that the Prosecutor has shown either that most of those members of the Governing Body who have lost trust and confidence in the Dean, or even many of them, have done so as a result of the conduct alleged against him in the charges, or that, where trust and confidence in him had been previously eroded, the position became irremediable or that their working relationship irremediably broke down on that account.

#### Conclusion.

128. For the reasons that I have explained, I reject the first charge.
129. I also reject most of the allegations of breach of fiduciary duty against the Dean. I cannot accept the Prosecutor’s contention that he was not entitled to make representations to the Salaries Board, or to argue that his remuneration should be reviewed and increased. (I say nothing, of course, about whether or not it should be increased, or should have been increased.) The Dean is to be criticised for the language and tone of some of his

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<sup>39</sup> See Appendix 5 para. 12.

<sup>40</sup> See Appendix 5 para. 13.

<sup>41</sup> See Appendix 5 para. 14.

correspondence with the Salaries Board, in particular his letters of 14 January and 26 February 2018, and possibly his letter of 17 January 2018. However, I am not persuaded that, for this or any other reason, he was in breach of his fiduciary duties in respect of the matters charged in category 2, or that they constitute good grounds for his removal from office.

130. Nor do I accept that the Dean is open to significant criticism or was in breach of any duty in respect of the matters charged in categories 3, 4, 5 and 7.
131. With regard to the charges in category 6, I conclude that the Dean was in breach of his fiduciary duty to the extent (but only to the extent) that I have explained, and he is not open to other significant criticism in respect of these matters.
132. The criticisms of some of the Dean's correspondence that I consider justified and the breach of fiduciary duty that I have found fall far short of good cause for removing the Dean from office. I reject all the charges.

Andrew Smith.

19 August 2019.

Fountain Court Chambers,

Temple,

London EC4Y 9DH.

## Appendix 1: Dismissal or removal from office for “good cause”.

1. The expression ‘good cause’ is defined in Statute XXXIX.5 as follows:

“For the purposes of this Statute ‘good cause’ in relation to the dismissal or removal from office or place of a member of the academic staff, being in each case a reason which is related to conduct or to capacity or qualifications for performing work of the kind which the member of the academic staff concerned was appointed or employed to do, means –

- (i) conviction for an offence which may be deemed by a [Tribunal] to be such as to render the person convicted unfit for the performance of the duties of the office or employment as a member of the academic staff; or
- (ii) conduct of an immoral, scandalous or disgraceful nature incompatible with the duties of the office or employment; or
- (iii) conduct constituting failure or persistent refusal or neglect or inability to perform the duties or comply with the conditions of the office or employment; or
- (iv) physical or mental incapacity ...”.

2. The definition is (and the other provisions of Statute XXXIX and any By-law made under it are) to be construed so as to give effect to these “guiding principles” (stated in Statute XXXIX.1):

- (i) “to ensure that members of the academic staff of [Christ Church] have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges”;
- (ii) “to enable [Christ Church] to provide education, to promote learning, and to engage in research efficiently and economically”; and
- (iii) “to apply the principles of justice and fairness”.

3. There is no charge or allegation against the Dean based on sub-paragraph (i) or sub-paragraph (iv) of the definition of “good cause”. The complainants and the Prosecutor rely on sub-paragraphs (ii) and (iii) of the definition. The charges set out duties which the Dean is said to owe to Christ Church,<sup>1</sup> and it is alleged that the Dean has acted in breach of them. Ultimately, however, breach of a legal duty is neither necessary nor sufficient to establish “good cause”: see below.

4. Two points may be made at the outset. First, the definition is exhaustive: if there is not good cause within the meaning of the definition, the Dean cannot be dismissed. Whereas, as I shall explain, the statutory regime for unfair dismissal in the Employment Rights Act, 1996 allows dismissal for a reason specified in the statute or for “some other substantial reason”, there is no comparable flexibility in the regime of Statute XXXIX. Secondly, I understand the definition to set a demanding test for what is “good cause”: this is obviously so in the first, second and fourth limbs of the definition, and this indicates the proper

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<sup>1</sup> I consider the duties owed by the Dean in Appendix 4.

approach to interpreting the more flexible language of the third limb. Thus, the Statute protects the Dean against removal from office unless there is strong reason for it. This is not surprising, given that the office is a Crown appointment and given that many see a public interest in academics enjoying considerable security of tenure.

5. The definition of good cause includes a threshold requirement that it be “a reason which is related to the conduct or to capacity or qualifications for performing work of the kind which the member of the academic staff concerned was appointed or employed to do”. The language is that of the Employment Rights Act, 1996: section 98 of the 1996 Act provides that, for the purposes of determining whether a dismissal is fair or unfair, a reason for dismissal falls within section 98(2) if “it (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do, (b) relates to the conduct of the employee ...”. This similarity of language is deliberate: this is confirmed because language used elsewhere in Statute XXXIX is that of section 98 of the 1996 Act, and indeed statute XXXIX.4 refers expressly to the 1996 Act.
6. There is authority on the meaning of “relates to the conduct” in section 98 of the 1996 Act, and in my judgment this informs the meaning to be given to the phrase “related to conduct” in Statute XXXIX.5. In the 1996 Act, when a question arises whether a dismissal was fair or unfair, “it is for the employer to show – (a) the reason ... for the dismissal, and (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held”. In the case of Ezsias v North Glamorgan NHS Trust, [2011] IRLR 550, a surgeon was dismissed after there had been what was described as an irretrievable breakdown of trust and confidence between him and his colleagues. The Employment Appeal Tribunal had to consider whether the reason for the dismissal was properly to be regarded as related to conduct of the employee (and so a reason falling within subsection (2)) or “some other substantial reason”. (The reason that this mattered in the Ezsias case is irrelevant for present purposes.) In the Employment Appeal Tribunal, Keith J explained in his judgment (at para. 53) what he called the “refined but important distinction between dismissing Mr Ezsias for his conduct causing the breakdown of relationships, and dismissing him for the fact that those relationships had broken down”. The reason for Mr Ezsias’ dismissal was that “although as a matter of history it was Mr Ezsias’ conduct which had in the main been responsible for the breakdown of the relationships, it was the fact of the breakdown which was the reason for his dismissal (his responsibility for that being incidental)”. (The Judge used the term “incidental” not because it was of minor importance, but to connote that it was not the essence of the reason.) In these circumstances, the reason for the dismissal was held not to be one that “relates to the conduct of the employee”, but “some other substantial reason”.
7. The Prosecutor argued that the reasoning that governs the interpretation of section 98 of the 1996 Act should not be transported to inform the interpretation of Statute XXXIX, and that to do so would impose a more demanding test than is warranted by the ordinary meaning of the words “related to”. It is therefore submitted that, for the purposes of Statute XXXIX.5, the expression “related to conduct” covers the case where trust and



confidence or a working relationship breaks down as a result of conduct. I cannot agree: the similarity of wording of the 1996 Act and Statute XXXIX is too striking to be disregarded.

8. With regard to the sub-paragraph (ii) of the definition, there is guidance about the meaning of “conduct of an immoral, scandalous or disgraceful nature incompatible with the duties of the office or employment” in the decision of the Employment Appeal Tribunal in Dronsfield v Reading University, [2016] ICR 1107, where the Court considered identical wording in the statutes of Reading University.<sup>2</sup> The words are to be given their contemporaneous meaning, and are not restricted to any specific aspect of the office holder’s conduct, such as sexual behaviour.
9. Further, I accept the Prosecutor’s submission that conduct may be covered by this limb of the definition although the office holder does not appreciate that his conduct was in breach of his duties or was otherwise wrong: in normal language, conduct can be scandalous or disgraceful, if not immoral, in these circumstances.
10. This sub-paragraph requires that the conduct not only be immoral, scandalous or disgraceful, but also “incompatible with the duties of the office or employment”, the duties in this case including both duties as Head of House and ecclesiastical duties, and conduct might be incompatible with the duties of the office if it is incompatible with the duties of either aspect of it. This does not impose a rigorous test of whether the conduct itself constitutes a breach of the duties (or a duty), but a looser requirement that the conduct is inconsistent with the duties. It covers conduct that would make it significantly more difficult for an office holder to fulfil the duties of his office or unlikely that he would do so. It would also cover conduct in a personal capacity which makes it inappropriate for the office holder to carry out the duties of the office: to take an entirely hypothetical example, marital infidelity might be considered incompatible with the teaching and preaching duties of a cleric.
11. I come to the other limb of the definition of good cause on which the Prosecutor relies: “conduct constituting failure or persistent refusal or neglect or inability to perform the duties or comply with the conditions of office or employment”. The parties before the Tribunal differed as to whether “persistent” qualifies only “refusal” or also “neglect” and “inability”. I am inclined to think that, as was argued on behalf of the Dean, it qualifies all three nouns: the context demands it, notwithstanding, as the Prosecutor argued, the expression “persistent inability” is perhaps rather clumsy. After all, a short-term inability to work through illness would not be “good cause”. However, my decisions do not turn on this point: even if as a matter of semantics “persistent” qualifies only “refusal”, I would consider that in their context the nouns “neglect” and “inability” are to be understood to connote an element of continuity.

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<sup>2</sup> If the law report is accurate, the punctuation differed in that the Reading University Statute has no comma after the word “immoral”, but that cannot affect the meaning.

12. The Prosecutor seeks to rely on this limb of the definition in particular in relation to the first charge: that by reason of other matters alleged against him, “trust and confidence in the Dean has been irretrievably lost and/or has irretrievably broken down, as has the working relationship between the Dean and the Governing Body”. It is said that not only has the Dean failed or neglected or been unable to perform his duties as a trustee of the Foundation, but his conduct “undermined his authority, and the [Governing Body’s] trust and confidence in him, so that he thereby failed to perform, or neglected to perform, or was unable to perform the duties of Head of House”. Similarly in the first charge it is said that the loss of trust and confidence was “[b]y reason of” the Dean’s conduct, and more specifically the conduct alleged against him in the other charges. The wording of the charge reflects that this limb of the definition of good cause is not engaged just because trust and confidence have broken down or been lost (whether irretrievably or not), nor because as a result the Dean cannot perform his duties or comply with the conditions of the office. Under sub-paragraph (iii) of Statute XXXIX.5, only conduct of the Dean can be good cause for his removal of office. While this is undoubtedly a necessary acknowledgement on the part of the Prosecutor, it is not sufficient. Even if it brings the first charge within the wording of the sub-paragraph, as I have explained, the threshold requirement is that the “good cause” is one that “related to conduct” in the strict sense that I have explained.

Appendix 2: The date by reference to which the charges are to be determined.

1. The procedure for removing the Dean from office is governed by Statute XXXIX part VII. Statute XXXIX.42 provides that the Governing Body and the Chapter shall, in certain circumstances, “jointly appoint a tribunal to hear and determine the matter”. The Tribunal’s jurisdiction is therefore to determine “the matter”. The expression “the matter” is not defined, but the context in which it is used is that the power to appoint a Tribunal may be exercised if and only if it appears to both the Governing Body and the Chapter “on the available material that the complaint is supported by sufficient evidence which could, if proved, constitute good cause for the removal of the Dean from office”. To my mind, the inference is that the “matter” is the complaint which the Governing Body and the Chapter decide should be so determined: the complaint was that the allegations made in it were true when it was made, that is to say on 17 September 2017.
2. The Prosecutor disputed this reasoning, and contended that the proper question is whether the Dean was guilty of the charges at the date when charges were laid, 15 March 2018. It relied on Statute XXXIX.44, which provides that “A charge referred to the Tribunal shall be dealt with in accordance with the procedure prescribed in clauses 17 to 19 ...”. Those clauses are in part III of Statute XXXIX, which deals with discipline, dismissal and removal from office of members of the academic staff generally, and provides for the Governing Body to instruct a prosecutor to formulate the charge or charges for determination by an Academic Disciplinary Committee. Clauses 17 to 19 lay down procedural rules for when a tribunal is appointed in respect of a complaint or matter, but they do not purport to define the remit of a tribunal, and I cannot accept that they do so by implication.
3. I have therefore concluded that the proper question for me to consider in relation to each charge is whether the Dean was guilty of it as at 17 September 2017, when the complaint was made. Certainly, I see no proper basis for assessing his guilt by reference to the position at a date later than 3 October 2017, when the Governing Body and the Chapter took the decisions that led to the appointment of a tribunal.





### Appendix 3: The Governance of Christ Church.

1. Christ Church is governed by the Statutes, which at the relevant times were last amended by the Governing Body on 12 March 2014 and approved by Her Majesty in Council on 19 March 2015. The Statutes of Christ Church provide that, subject to certain exceptions that are irrelevant for present purposes, the government of Christ Church shall be vested in the Governing Body, which comprises the Dean, the Canons, the Official Students and certain Ordinary Students. Under Statute IX, the Governing Body has power to “make, amend and repeal By-Laws, not inconsistent with [the] Statutes”, and the By-Laws are binding on all members of the Governing Body and others.
2. The first six By-Laws comprise the Standing Orders with regard to the meetings and procedures of the Governing Body, and they can be suspended by, and only by, a majority of at least two-thirds of the votes of those present and voting.<sup>1</sup> They include a requirement that the Secretary send to the members of the Governing Body not later than five days before the meeting a complete list of Agenda, and notice of motions received by the Secretary less than five days before the meeting be considered only after suspension of Standing Orders.<sup>2</sup> Otherwise, there appears to be no power for the Governing Body to suspend or waive the By-Laws.<sup>3</sup>
3. The Dean of Christ Church has an office which is unusual, if not unique, in that he is both the Head of House of an Oxford College and the Dean of the Cathedral of the Diocese of Oxford. He is the most senior member of the Governing Body: Statute I.3. He is responsible for “order and discipline and the general superintendence of the House”: statute XII.1. He presides over all meetings of the Governing Body if present, and over all committees of the Governing Body if present and unless he has appointed the Censor Theologiae or another member of the Committee to deputise at the meeting. The Governing Body has power to pay the Dean a stipend out of the Corporate Revenue: Statute XII.3.
4. The Governing Body elect from amongst the Official Students a Senior Censor and a Junior Censor,<sup>4</sup> who are to work with the Dean in all matters pertaining to the academic life and administration of the College, and, with others, advise and assist the Dean on non-academic matters which may directly or indirectly affect the academic activities, prosperity or reputation of Christ Church.<sup>5</sup>

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<sup>1</sup> See By-Law 6.

<sup>2</sup> See By-Law 3.

<sup>3</sup> Prof. Simpson told the Tribunal that on occasions the Governing Body would “suspend” a By-Law which restricts the time that a member of Governing Body can serve on the Salaries Board. It might be, I suppose, that the Governing Body temporarily repealed the By-Law and then re-enacted it: I do not need to examine whether this would be a legitimate device, or whether there was some other means of achieving a “suspension” of a By-Law, other than the Standing Orders.

<sup>4</sup> See Statute XVI.1.

<sup>5</sup> See By-Law 33.

5. The Dean is to appoint a Censor Theologiae from the members of the Governing Body, who is to act generally as the Dean's deputy (Statute XII.2), and specifically is, if present, to preside over the Governing Body and any committee of the Governing Body in the Dean's absence.

#### The Visitor

6. Statute XXXVI contains provisions about the Visitor. While it allows the Dean (and any Canon or Student) who is aggrieved by an act or decision of the Governing Body to appeal to the Visitor, this does not extend to "any dispute relating to a member of the academic staff ... which concerns the member's appointment or employment ...".<sup>6</sup>

#### Grievance Procedures

7. Grievance procedures are set out at Statute XXXIX, Part VI. Their aim is "to settle or redress individual grievances promptly, fairly and, as far as may be, within the relevant area by methods acceptable to all parties". Under Statute XXXIX, Part VI, if other remedies within the relevant area have been exhausted, "the member of the academic staff may raise the matter with the Dean". There is, however, no grievance procedure available to the Dean himself. However, under By-Law 3, he (like any other member of the Governing Body) is entitled to raise a matter at a meeting of the Governing Body by giving notice that he wishes to do so.

#### The Salaries Board

8. The Salaries Board is established under Statute VIII and charged, inter alia, with consideration of questions relating to the remuneration generally of members of the Governing Body, and it makes recommendations to the Governing Body in that regard. Its members are the Dean, the Senior Censor, the Secretary of the Salaries Board, two other Official Students and three persons who are not members of the Governing Body (who are conveniently referred to as the "external members").
9. The Secretary is responsible for convening meetings and for preparing the agenda. Further, under the By-Laws, the Secretary of the Salaries Board is ex officio on two important committees, the Academic Committee and the Finance Committee.<sup>7</sup> It is provided in By-Law 42 that various College Officers, including the Secretary of the Salaries Board, shall be elected by the Governing Body at its meeting in eighth week of Trinity Term each year, and shall take office from 1 August.
10. In 2011 Christ Church (like other Oxbridge colleges) lost its status as an exempt charity, and was required to register with the Charity Commission. In this context, the College made

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<sup>6</sup> See Statute XXXVI.6. The expression "member of the academic staff" includes the Dean: see Statute XXXIX.3.

<sup>7</sup> The present Secretary of the Salaries Board, Prof. Judson, is also a member of the Remuneration Group, which has responsibilities for the remuneration of non-academic staff. At the time with which I am concerned, the Remuneration Group was not a committee or sub-committee of the Governing Body, although I was told that the position is now changed. The evidence does not indicate whether Prof. Judson belonged to the Remuneration Group ex officio Secretary of the Salaries Board.

certain changes to its Statutes and By-Laws and its governance, acting in accordance with advice of Leading Counsel. As far as the Salaries Board is concerned, first, it assumed a role in setting the pay of all the Senior College Officers: previously it had only increased the pay of Treasurer, the Steward and the Director of Development in line with the standard Joint Maximum (sc. the compound amount paid by the University and the College to a Common University Fund Lecturer or a University Lecturer at the top point of the standard salary scale). Secondly, the membership of the Salaries Board was expanded to include the three external members, and they were given powers which limit the authority of the Governing Body and the members of the Governing Body on the Salaries Board with regard to the remuneration of any member of the Governing Body. Thus, by Statute VIII.2 it is provided that:

“The Salaries Board shall not make a recommendation to the Governing Body concerning the remuneration of members of the Governing Body unless it has been approved by a majority of [the external members]”; and

“In determining any question relating to the remuneration of its members, the Governing Body shall not approve any arrangement which would confer on any of its members a greater benefit than that recommended in relation to those members by the Salaries Board”.

#### Conflicts of interest and Code of Practice

11. The purpose of these restrictions on the freedom of members of the Governing Body to determine its members' remuneration is, of course, to mitigate the risks to the charity inherent in having the Governing Body, the trustees of the charity, determine what they are paid by it. The By-Laws have other provisions about managing conflicts of interest, including a Code of Practice, which applies to all members of the Governing Body and other persons attending its meetings and applies to meetings of the committees, sub-committees and working groups of Governing Body as well as meetings of the Governing Body itself: By-Law 5 and Appendix 1. It requires members of the Governing Body to declare any material interest in any matter of business (that is to say any matter which may influence his or her judgment or may reasonably appear to be capable of doing so, so that the judgment may not be exercised wholly and exclusively in the interests of the charity). If a person has a material interest of a pecuniary nature in any business, he or she is to withdraw from any meeting at which the business is under consideration and may not speak on the matter unless Governing Body has resolved otherwise, and in any case may not vote on the matter.

#### Policies of the Salaries Board

12. Before the appointment of the present Dean, the practice had been to increase the Dean's salary from time to time: in 2006, 2008, and 2012 the Salaries Board had recommended increases to the Governing Body on the basis of a conventional formula: that they be made “in light of the prevailing stipends of Heads of House”. The Governing Body had accepted the recommendations.

13. At about the time that the College was becoming a registered charity or preparing to do so, the Salaries Board adopted for the first time written policies about remuneration.<sup>8</sup> At a meeting on 11 May 2011 the Governing Body approved a paper dated 4 April 2011 and entitled “Salaries Board Policies relating to the remuneration of members of the Governing Body”. With regard to the remuneration of the Dean, it said that his salary “(i) ... is normally increased by the same percentage as the Joint Maximum; (ii) the Board also periodically monitors the general level of salaries paid to Oxford Heads of House ... to ensure that the Dean’s salary remains comparable. When the Board makes a recommendation of a special increase on this basis it says something like this: ‘This recommendation is made in light of the prevailing stipends of Heads of House’.” The term “salary” was defined: “salary: the basic pay, not including any housing allowance or any special payments”. There is nothing in the policies about how the salary of the Dean should compare with that paid to the other Senior College Offices or other persons at Christ Church. Nor was there any suggestion that it should be set by reference to the pay for other clerical offices.
14. The policies also referred to what was to be paid to a new Dean on appointment: “Starting salary: the new Dean is offered the same salary as his/her predecessor would have received; any proposal for a higher starting salary would be referred to the Salaries Board”. This echoed a report of the Salaries Board dated 29 January 2010 and approved by the Governing Body, which included a recommendation about the starting salary of a new Dean: “the Governing Body is asked to adopt the policy that a new Dean shall normally be offered the same salary as his/her predecessor would have received [Note: this reflects current practice], and that any proposal for a higher starting salary shall be referred to the Salaries Board”.
15. The 2011 paper had a section entitled, “Rulings on individual cases and dispute resolution”. This included the following paragraph: “If a member of the Governing Body is not content with the ruling of the Salaries Board ..., there is no further remedy (apart from the formal Grievance Procedure ...) except that the Board ... may reconsider the question in light of fresh representations if it considers it reasonable to do so”. Thus, the implication of the policies of the Salaries Board, as approved by the Governing Body, is that a member of the Governing Body who is discontent with a decision of the Salaries Board might make fresh representations to it. (As I have said, the Grievance Procedure is not available for a Dean. Thus, the possibility of making fresh representations to the Salaries Board is the more important for a Dean.)
16. It appears from Prof. Judson’s evidence to the Tribunal that in 2015 there was a new version of the policies with minor changes, but the evidence about this was not entirely clear, and any changes were unimportant for present purposes. In August 2017, Prof. Judson made further minor changes, and amended the wording about the salary of the Dean being periodically monitored: the 2017 version read “the Board periodically monitors the general

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<sup>8</sup> Prof. Judson told the Tribunal that the Salaries Board’s policy about the decanal salary was first put into written form in 2009.



level of salaries paid to Oxford Heads of House ... to consider whether the Dean's salary remains comparable"(instead of "to ensure that the Dean's salary remains comparable").

17. Prof. Judson told the Tribunal that he wrote this revised version of the policies without consulting other members of the Salaries Board. He considered that he was simply ensuring that any references in the document were up to date and making minor changes in wording that did not affect the meaning. The new version was never presented to the Governing Body and, at all times relevant for present purposes, the only version of the policies approved by the Governing Body was the 2011 version. The 2017 revision was sent to other members of the Salaries Board under cover of an email of 18 September 2017, but the covering email did not draw attention to the change about periodical monitoring of the Dean's remuneration (or any other changes).<sup>9</sup>

#### Staff Handbook and harassment

18. Christ Church had at the relevant times (and has) a Staff Handbook, and it included a Personal Harassment Procedure. It stated that Christ Church deplores all forms of personal harassment, and that the procedures were published to inform staff of the type of behaviour that is unacceptable, and that all staff were expected to comply with the policy. The (non-exhaustive) list of examples of harassment included "abusive, threatening or insulting words or behaviour and bullying". There is scope for debate whether the Dean is (and other members of the Governing Body are) to be regarded as "staff" and covered by the procedure. However that might be, the Dean accepts that he should abide by the principles about harassment that are set out in the Staff Handbook.

#### Published Codes and Guidance

19. Although not strictly a matter of the governance of Christ Church, it is convenient here to mention briefly some publications that give guidance to charities. These include the Committee of University Chairs ("CUC")'s Higher Education Code of Governance (December 2014), the Charity Governance Code for Larger Charities, published by the Charity Governance Steering Group (2015), and the draft Remuneration Guidance of the CUC (December 2017). I do not need to say much about the guidance provided. It is sufficient to give its flavour by referring to three points, which the Dean drew to the attention of the external members in his letters to Dr Asquith and Mr Crisp of 21 March 2018:
- The Charity Governance Code recommended that a charity's Salaries Board should "review its own performance".
  - The Higher Education Code said that "the Remuneration Committee must consider comparative information on the emoluments of employees within its remit when determining salaries, benefits and terms and conditions and ensure that all arrangements are unambiguous and diligently recorded".
  - The draft Remuneration Guidance said that the remuneration for senior post-holders should "relate to the *competitive environment* ... [and] remuneration for the [Head of

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<sup>9</sup> Indeed, the email said that "the changes "reflect[ed] the Board's decisions on policies since the earlier version", but Prof. Judson acknowledged in his evidence to the Tribunal that was not the case with regard to the revised wording about monitoring the Dean's remuneration.

the Institution] must separately be justified, published and related to the remuneration of all staff within the organisation” (original emphasis).

#### Appendix 4: The Duties of the Dean.

1. The Prosecutor does not rely on any contractual duties owed by the Dean to Christ Church, and I do not need to consider the Dean's contractual relationship with the College, nor do I need to consider whether or not the relationship is one of employer and employee. In the course of these proceedings the Prosecutor alleged that the Dean owes duties to the Governing Body, but that allegation has been abandoned. Similarly, the Prosecutor relied on section 1 of the Trustee Act, 2000 and alleged that the Dean owed Christ Church a duty of care,<sup>1</sup> but that argument has also been dropped.
2. The Prosecutor's case is that, as a trustee of the charity, the Dean owes Christ Church fiduciary duties, and that the conduct that is the subject of the charges was in breach of them. He is said to have been in breach of these fiduciary duties:
  - A duty of single-minded loyalty to the Foundation.
  - A duty not to place himself in a position where his duty to the Foundation and his interest would or might conflict.
  - A duty not to act for his own benefit or the benefit of a third party without the informed consent of the Foundation.
  - A duty to act in good faith to the Foundation.
  - A duty not to make a profit out of the Foundation.
3. The Prosecutor relied on the authoritative statement of Millett LJ in Bristol and West Building Society v Mothew, [1998] Ch 1 at p.18A-C, who stated an overarching principle that a "principal is entitled to the single-minded loyalty of his fiduciary", and described the other duties to which I have referred as "facets" of this "core liability". I note that Millett LJ went on to mention the duty of a fiduciary who deals with his principal to show that the transaction is fair and to make full disclosure of all facts material to the transaction in the course of negotiations, but it is not alleged that the Dean was in breach of such an obligation.
4. The Dean accepted that, as a member of the Governing Body, he is a trustee of the charity, and did not dispute in broad terms that he is under these duties. The Prosecutor also contended that the Dean was under a duty not to disclose Christ Church's confidential information, and again the Dean did not dispute this.<sup>2</sup>
5. I need say no more about the core liability, but shall comment on its four facets. First, the principle that a fiduciary must not put himself in a position where his personal interest may conflict with his duty as a fiduciary, which operates to prohibit a trustee from intentionally

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<sup>1</sup> Under the Trustee Act, 2000 a trustee owes a duty to "exercise such care and skill as is reasonable in the circumstances, having regard in particular" to specified matters.

<sup>2</sup> The Prosecutor said that this duty too was owed because the Dean is a trustee, and so a fiduciary. The Dean did not agree that the Dean was under this duty because of his fiduciary position, but because the law recognises duties to protect confidential information in any event. This debate is not important for present purposes.

putting himself in a position in which his interests may conflict with his duties: in order for the principle to apply, there must be what has been described as “a real sensible possibility of a conflict”.<sup>3</sup>

6. The Prosecutor contended that the Dean was in breach of this duty because, his initial request for a pay review having been refused, he pursued it and presented arguments in support of it. It was said that therefore he was improperly pursuing his own interests, although they were in conflict with those of the charity. I cannot accept that the Dean’s duties, while allowing him to request a review of, and an increase in, his remuneration, prohibit him from advancing the reasons that he considers his request justified. After all, all members of the Governing Body, being trustees, would be in a similar position when they make any request about remuneration or any other financial or other benefit. It would be the more remarkable because the Salaries Board’s own policy, approved by the Governing Body, invites members of the Governing Body to make further representations if they are discontent with a decision taken by the Board.<sup>4</sup>
7. I reject the Prosecutor’s contention. The principle that a fiduciary should not allow his or her duties and personal interests to be in conflict is concerned with circumstances in which a trustee (or other fiduciary) is exercising the powers and authority enjoyed by virtue of the fiduciary position, or, as it is sometimes put, the trustee can never derive any profit *out of his or her trust*. It is for this reason that (s)he must be scrupulous to avoid a conflict of interest and duty that creates a risk that (s)he might do so. In this case, therefore, the Dean, and other members of the Governing Body, may not attend meetings of the trustees, that is to say meetings of the Governing Body, nor of its committees, including the Salaries Board, where personal interests are engaged, and they may not vote in these circumstances. Accordingly, the provisions about conflicts of interest in the By-Laws and the Code of Practice at Appendix 1 to them are directed to attendance and voting at meetings of the Governing Body and its committees, sub-committees and working groups. They did not apply where the Dean, though a paid office-holder, was not using powers or exercising authority that he enjoyed by virtue of his fiduciary position. Similarly, the principle that the Dean, as a fiduciary, should not put himself in a position in which his interest may conflict with his duties was not materially engaged in his dealings with the Salaries Board and its members when he was not using powers or exercising authority as a member of the Governing Body or the Salaries Board (and so not as a trustee), but making representations to them.
8. I can deal with the other facets of the core liability briefly. They are closely linked with the principle governing the conflict of interest and duty, and it seems to me that do not really

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<sup>3</sup> See Lord Upjohn in Phibbs v Boardman, [1967] 2 AC 46 at p.124C: “the reasonable man looking at the relevant facts and circumstances of the particular case would think that there is a real sensible possibility of conflict, not that you could imagine some situation arising which might, in some conceivable possibility in events not contemplated as real sensible possibilities by any reasonable person, result in a conflict”. (Lord Upjohn was giving a dissenting speech, but he disagreed with the majority on the facts and not on the law, and I do not think that this detracts from the authority of this statement.)

<sup>4</sup> See Appendix 3, para. 15.

have independent scope in the circumstances of this matter. As is said by Finn in *Fiduciary Obligations* (1977) at chapter 10, paragraph 93, the duty of a fiduciary not to act for his own benefit or for the benefit of another person other than his principal has only a limited operation, and it is the principle about conflicts that will in many cases provide the real basis for an attack on a decision from which the fiduciary derives a benefit. After all, as Lord Normand said in Dale v Inland Revenue Commissioners, [1954] AC 11, 27, “The rule is the same for all [fiduciaries]: “it is not that reward for services is repugnant to the fiduciary duty, but that he who has the duty shall not take any secret remuneration or any financial benefit not authorized by the law, or by his contract, or by the trust deed under which he acts, as the case may be”.

9. Similarly, the duty of good faith is seen by Finn (*loc. cit.* at chapter 15, paragraph 165) as embracing the principle about conflicts. The duty on a fiduciary not to make a profit out of his or her position (either directly or indirectly), which requires the fiduciary to account for any such profit, does not depend on the proof of an actual conflict, but here the Dean did not in fact make any profit from any breach of duty.
10. The Prosecutor also argued that for two reasons Christ Church is entitled to require the Dean to meet a particularly rigorous standard in complying with his fiduciary obligations. First, the Dean is, of course, a member of the clergy, as is required by the office. The Prosecutor relied on the Church of England Guidelines for the Professional Conduct of the Clergy (2015), and in particular these extracts from the guidelines:
  - At 10.7, under the heading “Life and Conduct”, “The clergy need to ensure that all their financial activities, whether personal or corporate, meet the highest ethical standards”.
  - At 12.2, under the heading “Trust”, “The clergy are placed in a position of power and authority over others ... the clergy should resist all temptation to exercise power inappropriately”.
11. The Dean responded that, in that the guidelines do not impose legal duties, there is no principled reason for them to apply to him in the discharge of his duties as Head of House. I disagree: the decanal office includes the deanship of the Cathedral, and the Dean is properly to be expected to meet the standards of a clergyman in fulfilling his fiduciary duties as a trustee when assessing whether his conduct has been compatible with the duties of his office. That said, I consider the guidelines of little application to the allegations against the Dean: in particular, when read in its context, guideline 12.2 is about the power and authority that a clergyman has by virtue of that standing, and not about the power or authority that the Dean has in respect of College affairs by virtue of his office.<sup>5</sup>

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<sup>5</sup> The full text of guideline 12.2 is as follows: “The clergy are placed in a position of power and authority over others, in pastoral relationships, with lay colleagues, and sometimes with other ministers. In all forms of ministry, in leadership, teaching, preaching and presiding at worship, the clergy should resist all temptation to exercise power inappropriately. This power needs to be used to sustain others and harness their strengths, and not to abuse, bully, manipulate or denigrate”. I take the word “leadership” here to refer to leadership in the Church.



12. Secondly, the Prosecutor relied on the collegiate nature of the Foundation, citing the determination of Lord Jauncey when he acted as a Special Commissioner for HM the Queen as Visitor of Westminster Abbey in Neary v Westminster Abbey, [1999] IRLR 288: at paragraph 19, having observed that the Abbey was “a religious collegiate institution with a tightly knit community”, he said that “The character of the institutional employer, the role played by the employee in that institution and the degree of trust required of the employee vis-a-vis the employer must all be considered in determining the extent of the duty and the seriousness of any breach thereof”.
13. That proposition was not disputed by the Dean in principle, nor could it be. The Dean submitted that the application of the principle must be tempered in the case of an academic institution so as to respect academic freedom, including “the right to express one’s opinion publicly about the institution or the education system in which one works ...”.<sup>6</sup> Moreover, Statute XXXIX.1 stipulates that it is a guiding principle governing the construction of the Statute, and so the meaning to be given to “good cause” in relation to the dismissal or removal from office, that members of the academic staff of Christ Church, including the Dean, have “freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges”. I see no justification for restricting this principle to academic matters and to exclude matters of governance or administration.
14. All that said, however, I agree with the Prosecutor that, as Lord Jauncey explained, while the collegiate nature of the institution does not change the kind of duties owed by the Dean, it may determine their extent, and, depending on the circumstances, the importance that they be observed and the seriousness of any breach.

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<sup>6</sup> The Dean cited this extract from the University and College Union statement on Academic Freedom, 26 January 2016.

## Appendix 5: Internal exchanges within Christ Church.

1. In this Appendix I set out a history of the exchanges in which the Dean and others were involved in relation to his remuneration. It does not purport to be entirely complete, but the nature of the charges requires me to examine parts of the history in some detail.
2. The College appointed a new Development Director in 2017. It was unable to find a satisfactory candidate for the salary being paid to the outgoing Director, and at a meeting on 17 May 2017 the Salaries Board agreed to a higher salary. The Dean informally introduced a discussion on 17 May 2017 about the relative remunerations of the Senior College Officers, and then retired from the meeting because of his conflict of interest. The other members of the Board, including the external members, took the view that there should be no such internal linkage between the pay of the Development Director and the remuneration of others.
3. On 20 July 2017, the Dean spoke to Prof. David Hine about the pay of the Senior College Officers.<sup>1</sup> He made this indirect approach to the Salaries Board through Prof. Hine because, as the Dean put it in his evidence to the Tribunal, he thought that Prof. Judson “would immediately brush [him] off”. After they had spoken, the Dean sent Prof. Hine an email:  
  
“On salaries, I think that the three that need adjustment are Treasurer, Steward and Dean. The Steward will need to move up a bit; the Treasurer to more than the Head of Development; and whatever you decide for the Dean. Roger [sc. Prof. Roger Davies, a member of the Governing Body] had some interesting thoughts on this, and it might be worth touching base with him. I think that his view was that we were a bit off the pace for the biggest colleges. That is true, I think. But I am conflicted here,<sup>2</sup> as I say, so over to you”.  
  
Prof. Hine responded that he would speak to Prof. Lindsay Judson, the Secretary of the Salaries Board. The Dean sent another email in reply, without referring to his own remuneration, but writing, “On the salaries, I think that [we’ll] need to lift Treasurer to at least £99k, and the Steward to the mid £80k range – maybe even late £80k”.
4. Thus, the Dean raised with Prof. Hine both internal linkage questions (how remuneration compared with those of other officers of the College) and external linkage questions (how it compared with pay at other Oxford Colleges). Prof. Hine spoke with Prof. Judson about the

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<sup>1</sup> In the summer of 2017 the Dean underwent an appraisal, which he himself arranged and which was carried out by a Mr Andrew Jackson, with whom the Dean had had previous dealings and who undertook the task without charging. It was suggested to the Dean by the Prosecutor that this timing was engineered by the Dean to coincide with his request that his remuneration be reviewed. No evidence supports this conjecture, and I reject it.

<sup>2</sup> In his evidence to the Tribunal, the Dean explained that by “here” he intended to refer to the remuneration of the three officers, the Treasurer, the Steward and himself, and not only to his own.

Dean's salary (and also the Treasurer's salary<sup>3</sup>), and Prof. Judson understood him to be conveying a request by the Dean that it be reviewed and increased. However, Prof. Hine apparently presented it as a request based on internal linkage. Either he did not mention external linkage at all, or placed so little emphasis on this point that Prof. Judson did not register it.<sup>4</sup> Prof. Judson therefore explained to Prof. Hine that the Board had not accepted that the salaries of the Senior College Officers should be linked to each other, and that in any case such a comparison would have to take account of the residential accommodation provided to the Dean at the Deanery: the other Senior College Officers were not given accommodation, but were paid a housing allowance. Prof. Judson responded to Prof. Hine's inquiry in his capacity of Secretary of the Salaries Board and without involving other Board members: he thought that he was entitled to do so because the request was conveyed to him on the basis that an increase was justified by considerations of internal linkage with the remuneration of the Development Director, and the Salaries Board had already decided that that should not influence what was paid to other Senior College Officers. However, Prof. Hine understood (apparently wrongly) that Prof. Judson intended to take the question of internal linkage back to the Board, and so reported to the Dean.

5. On 22 September 2017 Mr James Lawrie, the Treasurer, sent Prof. Judson an email, which he marked "Confidential Salaries", saying that he would like to discuss "a couple of anomalies". His first point was about the Dean's remuneration: he referred to a table<sup>5</sup> of what Oxford Heads of House were paid in 2015/2016 and observed that the mean salary for "non PPH HoHs" (non-Permanent Private Halls' Heads of House) was £97,000, and that "A number of what some would deem to represent our peers appear to be paying quite a bit more than us". The second "anomaly" concerned his own pay: that the new Development Officer was being paid more than he was, which, he said, "seems slightly out of kilter since he reports to me on pay and rations". Prof. Judson decided to refer both questions, one of external linkage in the case of the Dean's salary and one of internal linkage in the case of the Treasurer's remuneration, to the next meeting of the Salaries Board.
6. On 26 October 2017, before a meeting of the Salaries Board on 1 November 2011, Prof. Judson wrote a short paper entitled "Stipends for Senior College Officers". It referred to the Dean "informally" raising questions about his salary and that of the Treasurer "in the context of the new Development Director's salary"; set out the current salaries of the three Officers; and summarised Mr Lawrie's email. Prof. Judson concluded with four observations by way of "Notes": that in Trinity Term 2017, in the context of approving a salary range for the prospective Development Director, the Board had held an informal discussion about internal linkage; that the Treasurer had been in post since January 2006, and the Board has reviewed his salary and recommended an increase in Trinity Term 2016; that the Dean had

<sup>3</sup> According to the evidence of Prof. Judson to the Tribunal, Prof. Hine did not refer to the Steward's remuneration.

<sup>4</sup> When he gave evidence to the Tribunal, Prof. Hine did not have a clear recollection as to whether or not he mentioned external linkage to Prof. Judson.

<sup>5</sup> Mr Lawrie was referring to an EBC, or Estate Bursars' Conference, table. My understanding is that such tables are produced annually within the University, and set out what the different colleges pay officers in broadly comparable positions, such as Heads of House, Estate Bursars, Domestic Bursars and Chaplains.

been in post since October 2014; and assuming the rent for the “Fell Tower flat” to be about £11,000 pa,<sup>6</sup> the Dean’s remuneration would be 10<sup>th</sup> in the table of remuneration for Oxford Heads of Houses.

7. Before the Tribunal, the Dean criticised the paper on the grounds that it was designed to dissuade the Salaries Board from increasing his remuneration. I do not consider that criticism justified. The Dean made four points in support of it:
  - First, he said that the paper did not refer to his concern about what became known as the “gender pay gap issue”, that is to say a concern that Ms Pauline Linieres-Hartley, the Steward, might be being underpaid in relation to men doing comparable work. Nothing suggests that the Dean had raised this question before 2018.<sup>7</sup>
  - Secondly, the Dean pointed out that the note did not mention that he had questioned whether his remuneration and those of the Treasurer and the Steward should be reviewed because external linkage comparisons justified an increase, although he had raised this point with Prof. Hine. However, as I have concluded, Prof. Hine did not convey it to Prof. Judson.
  - Thirdly, Prof. Judson’s note said that Mr Lawrie had made his argument by reference to the comparative figures of other colleges for 2014/15, whereas in fact, in his email of 22 September 2016, he had used figures from the 2015/16 survey. Using the 2015/16 figures, the Dean’s salary compared less favourably with those of other Heads of Houses than in the earlier figures, being twenty-eighth, rather than twenty-fifth, in the league of 37 colleges. Apparently, according to the evidence before the Tribunal, Mr Lawrie later provided Prof. Judson with the earlier figures rather than the more recent 2015/16 figures. This was unfortunate, but I decline to attribute it to any manipulative intention on the part of Prof. Judson (or anyone else).
  - Fourthly, the Dean took issue with Prof. Judson’s view that the Board should have regard to rent received by the Dean from the Fell Tower accommodation at the Deanery, and this became the subject of later exchanges. There is room for debate about this, but Prof. Judson’s note presented the point fairly, and there is no reason to think that it did not represent his genuine views.
8. At the meeting on 1 November 2017, the Board declined to review the salaries of the Treasurer and the Dean. On the same day, Prof. Judson sent a short email to the Dean reporting that the Board had had a long and very careful discussion and took the view that no action should be taken on either his salary or Mr Lawrie’s. He explained, with regard to the Dean’s salary, that the Board “noted that it [was] significantly higher than the Development Director’s, and thought that there was no other reason to review it at this stage”. The Dean responded the next day, “Appreciated and understood”.

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<sup>6</sup> The “Fell Tower flat” comprises rooms on the top floor of the Deanery, which the Dean, like his predecessor, rents to graduate students. Prof. Judson said that the assessment of £11,000 was in line with Christ Church’s charge for a 40-week residence in St Aldates or the Liddell Building. The Dean explained in his evidence to the Tribunal that in fact rent is not always received, accommodation sometimes being provided free because of personal circumstances, but there is no evidence whether Prof. Judson, or anyone on the Salaries Board other than the Dean, knew this.

<sup>7</sup> See para. 23 below.

9. The explanation of the decision given in the email adopted precisely the language of the minutes of the meeting, which similarly did not set out further details of the reasons for the decision. Prof. Judson sent the minutes to the other members of the Salaries Board, but, by oversight, did not send it to the Dean.<sup>8</sup>
10. The evidence before the Tribunal expanded on the brief minute of the discussion about the Dean's salary. The Board considered that it was too soon after the appointment of the Dean to conduct a review of his salary. Mr Hugh Crisp, an external member of the Salaries Board, explained to the Tribunal that it was thought that the Dean should have what he referred to as a "bedding-in period". The Dean had been in office for three years, but Mr Crisp's view was that a review should be four, rather than three, years, after appointment. It is not clear whether others on the Board agreed about that, but at all events the Board decided that the request for a review was premature.<sup>9</sup> As a result, the Board did not consider how the Dean's salary compared in terms of external linkage, which, under the Salaries Board's policy approved by the Governing Body in 2011, would have been considered on a review.
11. Before I pursue the history of the Dean's request for a review of his remuneration, I shall refer, as sparingly as I properly can, to examples of the emails passing between Prof. Hine and other members of the Governing Body because they are relevant to one of the charges.<sup>10</sup>
12. First, in October 2017 there was discussion about drawing up a "job description" for the Censors and about the appointment of a new Academic Registrar after Ms Alison Tesh had resigned with effect from 31 December 2017. The issues in debate are not important for present purposes: I am not in a position to assess them, and it would be beside the point for me to do so. Prof. Hine forwarded an email from the Dean to other members of the Governing Body who had in the past served as Censors.<sup>11</sup> An exchange of emails ensued, which showed little or no respect for, or trust and confidence in, the Dean. For example, Prof. Hine described a comment of the Dean about a draft job description for the Censors as

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<sup>8</sup> The Dean suggested before the Tribunal that Prof. Judson omitted to send them to him deliberately because the minute of the decision about the Treasurer's salary referred to the applicable EBC table and Prof. Judson did not want the Dean to learn of these tables. I reject the allegation: Prof. Judson was not to know that the Dean was unaware of the EBC tables, and in any case there is no sufficient evidential basis for the Dean's allegation.

<sup>9</sup> It was not conveyed to the Dean in Prof. Judson's email or otherwise that the Board might conduct a review later, perhaps in a year's time. In a letter of 20 February 2018, to which I refer at para. 47 below, Prof. Judson told the Dean that ordinarily the Board would not conduct a review within four years of an appointment. It is tempting, but pointless, to speculate how differently matters might have developed if this information had been conveyed in November 2017.

<sup>10</sup> I have disregarded the emails that I describe in this and the following paragraphs in deciding most of the charges, but they bear upon my consideration of the first charge.

<sup>11</sup> Those members of the Governing Body who had served as Censors (or most of them) formed a group that was sometimes referred to as the "Committee of ex-Censors", but they had no formal standing as a committee in the governance of Christ Church, except that, under By-Law 33, the Senior ex-Censor nominates the Censors for election by the Governing Body on the advice of the ex-Censors (and following consultation with Tutors and College Officers).



“frankly pathetic”. Prof. Ian Watson expressed gratitude to Prof. Hine for “managing to find the time to deal with this rubbish”. Prof. Judson expressed agreement with that comment, and added with regard to the Academic Committee that the Dean “ha[d] to work with the academic side, not against it (so no more sniping about the censorship ...)”. Prof. Hine and Prof. Simpson also had a private exchange of emails, in which Prof. Hine wrote that “Deep down the Dean agrees [that the urgent matter was to fill the post of Academic Registrar] but he is so stupid, so spiteful towards tutors and ex-C[ensor]s, and so unable to resist getting distracted in sideswipes, that he just can’t allow what’s really important to happen. And I’m coming to fear he’s unreformable in that regard”. Prof. Simpson replied that he thought that Prof. Hine had acted correctly, but added that he agreed that working relationships should be maintained, “although I am coming to think that he scarcely deserves it”.

13. Prof. Hine continued to correspond with Prof. Simpson in a similar tone in November 2017. For example, in an email of 8 November 2017, Prof. Hine wrote of the Dean, “Nasty and stupid. He’s working against us not for us ... He’s got to go”. Prof. Hine told the Tribunal that this reflected exasperation that he was feeling around this time, but the hostility that it reflects was not transient.<sup>12</sup> Prof. Hine was replying to an email of Prof. Simpson in which he had written that he “fear[ed] it [was] hopeless” to expect the Dean to appreciate the differences between two draft press releases that Christ Church might issue. While Prof. Simpson’s email does not display the same hostility as Prof. Hine’s, it evidences that he already had little or no confidence in the Dean.
14. Disrespectful and hostile emails of this kind were not confined to the ex-Censors: in emails to Prof. Hine on 15 November 2017, Mr Karl Sternberg referred to the Dean as “such a manipulative little turd” and “the little Hitler”, and wrote “We are doomed with this wretched man in place”. In an email of 11 January 2018, he described the Dean as “incorrigible, and thick, and a narcissist”. On 27 January 2018, he wrote that the Dean lacked integrity, and that the ex-Censors should “get rid of him”.
15. Returning to the Dean’s request for a review of his remuneration, in mid-December 2017<sup>13</sup> the Dean sent Prof. Judson a letter, which is the first of his communications referred to in the charges. It was headed “Confidential”, and the Dean introduced it as “a brief note to follow-up [Prof. Judson’s] note of 1<sup>st</sup> November, and also to address a couple of other salary-related matters”. The Dean did not refer to the remuneration of the Treasurer or the Steward in this letter. He first raised a concern about the pay arrangements for non-academic (or non-teaching) staff, which is not directly relevant for present purposes. It suffices to say that Prof. Judson considered that the Dean was criticising him, but I do not so

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<sup>12</sup> For example, on 9 January 2018 Prof. Hine again wrote to Prof. Simpson, “Life would be so much easier if [the Dean] were to go”.

<sup>13</sup> The letter has been read as dated 17 December 2017, and it is so referred to in the charges. The date is in manuscript and not at all clear, and it appears from the email from Prof. Hine to Prof. Simpson, to which I refer at para. 18 below, that the letter had been received by Prof. Judson by 15 December 2017. I conclude that it was probably written on 12 December 2017, despite the evidence of the Dean to the Tribunal. In a briefing paper for the solicitors, Blake Morgan, dated 13 February 2018, the Dean apparently indicated that he sent it on 12 December 2017, and I consider it likely that he was right about that. However, I do not see the date as important to what I have to decide.

read the letter: rather the Dean was drawing Prof. Judson's attention to what he perceived to be a problem resulting from having two separate pay arrangements for different categories of non-academic staff, and asking for Prof. Judson's views about it.

16. The Dean then turned in his letter to Prof. Judson's email of 1 November 2017, and asked three questions: (i) "What is the *method* and *reasoning* by which the Board arrives at the current figure [for his salary], which is a gross salary (currently) of £90,936 pa?"; (ii) "Does the Board take into account other Oxford Colleges and the remuneration for their Heads of House?" and, having referred to certain other colleges, "Are there any particular reasons for the disparity between Christ Church and these other colleges?"; and (iii) whether the Board, when coming to its decision on 1 November 2017,<sup>14</sup> had considered the role of the Dean, which he described as one of the busiest Head of House roles in Oxford: he was paid, he said, "at a level of many Oxford Graduate Colleges".
17. The Dean introduced the third point with a description of the work that his job involved and referred to the division of his duties between the College and the Cathedral. He explained to the Tribunal that his purpose was to put a focus on how demanding his role was, rather than to convey that he had it in mind to shed responsibilities. However, he then wrote, "Alternatively, should I be seeking to adjust my availability as a [Head of House] instead – especially out of term-time, when Cathedral duties hit their peak? ( ... This might mean, for example, one of the Censors taking my place in the USA and/or Europe in the future, to represent the College for our important fundraising and development purposes. Though I readily acknowledge that the Dean not going to the USA would not go down well with our American Friends Association. But it is 10-12 days in the post-Easter period I will not be having as holiday)". He concluded that he would be grateful for a reply "before next term begins, as I need to plan the diary, and if necessary, make some adjustments from 2018 onwards - for myself, and also for colleagues".
18. Apparently Prof. Judson told Prof. Hine that he had received a letter from the Dean about his salary, but without disclosing the contents. On 17 December 2017 Prof. Hine sent an email to Prof. Simpson in which he said that on 15 December 2017 the Dean "seems to have written a long and explosive letter to [Prof. Judson]. Contents of which I'm not yet sure. [Prof. Judson] hinted it was about inter alia his – [the Dean's] - salary and I have indeed suspected that the real reason, or at least a major further reason, why he wants [Prof. Judson] out of the Sec Salaries Board role is that he thinks that he's got a better chance of raising his own pay! If so, it (the pay rise) must be resisted at all costs".<sup>15</sup> Prof. Simpson replied that "the [Prof. Judson] thing is very concerning". On 18 December 2017 Prof. Hine referred in a further email to a planned meeting with Prof. Judson that afternoon, which he expected to be "Tactically ... difficult": he wrote, "Am completely onside with him about Dean's salary ...". At the meeting, Prof. Judson asked Prof. Hine for his thoughts about the proper response if someone asked for a pay increase because he was overworked: Prof.

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<sup>14</sup> The Dean referred in his letter to the Board's decision "back in October", but clearly that was a slip.

<sup>15</sup> Prof. Hine was not a member of the Salaries Board, and had no official standing with regard to determining the pay of the Dean (or anyone else), otherwise than as a member of the Governing Body when the Salaries Board brought a proposal to it.

Judson was careful not to identify the Dean, because he considered that the Dean had written him a private letter, but unsurprisingly Prof. Hine realised that the question had been raised in relation to the Dean's salary.

19. Prof. Judson replied to the Dean by letter dated 19 December 2017, marking his reply "Confidential". He explained to the Tribunal that he felt uncomfortable about the Dean's letter, and that, while he did not intend deliberately to hide anything from the Dean, he "adopted a [line of] saying less rather than more". He replied to the Dean's questions about his remuneration as follows: "we arrive at the Dean's salary mainly historically, by applying the academic cost of living increase to the previous year's salary, but partly also by periodic review. Such reviews do take account of the remuneration of other Heads of House". He repeated that, as he had said in his email of 1 November 2017, the Board had taken the view that there was no reason to review the Dean's salary at that time.
20. Prof. Judson then referred to the Dean's concern about his workload, describing the pressure that the Dean described as a problem that had not been faced before and as "a matter of urgent concern for the wider institution, and not only for the Secretary of the Salaries Board". He said that he was not sure how the Dean linked it to the question of his salary, but thought "that it is rarely a good idea to try to resolve problems relating to workload by adjusting remuneration". He suggested that the question would need discussion with a wider group, and that it would not be right to reassign duties "unilaterally". Therefore, he wrote, "With your permission, I shall discuss this in the first instance with one or two colleagues in the new year".
21. The Dean replied to Prof. Judson by a letter of 20 December 2017, again marking his letter "Confidential" and acknowledging the "measured and gracious tone" of Prof. Judson's reply. He suggested that there might be misperceptions about how salary scales were set in Christ Church and that there be developed "a rather clearer culture of parity, fairness and transparency" in relation to the pay of non-academic staff. He then referred to his concerns about the pay of the Treasurer and the Steward, Ms Pauline Linieres-Hartley, and how their remuneration compared with that of corresponding officers in other Oxford colleges.
22. The Dean declined the suggestion that his workload should be reviewed "at least for the foreseeable future", describing "the portfolio of tasks and the roles" as "(broadly) enriching, as much as it may be demanding". He then returned to the second of the three points in his letter of 17 December 2017: he referred to the remuneration being offered by other colleges in advertisements for a Head of House, and repeated his question, "Are there any particular reasons for the disparity between Christ Church and these other colleges?". He continued, "You say in your reply that you 'do take account of the remuneration of other Heads of House'. And I am therefore unsure what the Board means in saying that, given these clear, emerging disparities, 'the Board took the view that there was no reason to review your salary at present'. I am sure you will understand that I do not regard this as a *personal* matter, and it should not be read as such. It is a question of setting the right remuneration for the *role* (as distinct from the person). In the case of my role here, I am asking the Board to explain why the role of Dean is remunerated at less than the HoH's for those colleges

mentioned above ..." (original emphasis). He said that he was asking that the Board clarify the reasoning behind its decision. He asked for a reply "next month".

23. On 8 January 2018 the Dean sent Prof. Judson another copy of his letter of 20 December 2017, attaching it to an email about another matter and writing that he was not sure that Prof. Judson has received it. He said that he sent the copy, "Not least because of the 'gender pay gap' ..." <sup>16</sup>. There followed a short exchange of emails: Prof. Judson replied that he had received the letter of 20 December 2017, and that he would take the question about the salaries of the Senior College Officers to the Salary Board at its next meeting and would "copy the relevant parts of [the Dean's] letters to the Board". The Dean thanked Prof. Judson for this reply, and explained that he was asking for "a summary/digest of the reasoning of the Board". He did not comment about parts of his letters being sent to the others on the Salaries Board.
24. The Dean was criticised before the Tribunal for saying to Prof. Judson in his email of 8 January 2018 that he had not received a response to his letter of 20 December 2017, having requested a reply "next month". I consider the criticism unwarranted. He was emailing Prof. Judson about another matter, and added what was, to my mind, no more than an inoffensive enquiry to check that his letter had been received.
25. When explaining the decision not to review the Dean's salary in his reply of 11 January 2018, Prof. Judson, as he told the Tribunal, kept as closely as possible to the language used at the Board meeting on 1 November 2018. He wrote that the decision was taken "on the following basis", and set out these four points:
- "The Board was uneasy about the current policy of periodic reviews in light of the remuneration of other Heads of House", out of concern about a "ratcheting-up effect across the colleges" and noting "the increasing rate of increase in the typical salaries of new Heads of House".
  - "It noted that the value of [the Dean's] living accommodation is significant".
  - "[It noted] that [the Dean] receive[d] the rental income for the rooms in the Fell Tower".
  - "It took the view that [the Dean] has not been in post very long, and that the decanal salary was considered appropriate at the start of [the Dean's] office".

The letter concluded as follows: "As I have said, the Board expressed some unease about the current policy, and I think it will be appropriate for the Board to review it, of course taking your comments into account".

26. The Dean responded with a letter dated 14 January 2018. He was exasperated and somewhat angry when he wrote it, and this is reflected in its tone. During the Christmas vacation he had learned from another Head of House of the EBC tables, of which he had previously been unaware. After thanking Prof. Judson for the letter of 11 January 2018, he

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<sup>16</sup> The Dean wrote that he had mentioned the "gender pay gap" in his letter of 20 December 2017, but he was in error. He had referred to concern about the Steward's remuneration in general terms, but, as far as the evidence before the Tribunal goes, he had not previously suggested that there was discrimination or unfairness because of the Steward's gender.



again referred to the pay of the Steward and the Treasurer, saying that Prof. Judson's reply failed to respond about that. (Prof. Judson's letter of 11 January 2018 was only about the Dean's own salary.) With regard to the Steward, he wrote that he "remain[ed] concerned about the gender pay-gap ... linked to the salary of the Treasurer and the Development Director". He then wrote "More generally, I continue to be concerned about the lack of clarity in relation to principles that might guide the Salary [sic] Board's work". He said that the "current operation of the Board seems to exacerbate rather than mitigate [perceived disparities]", and opined that "we should have such principles in place: published, accessible and transparent for employees – and the wider public". Having expanded on this point and referred to the Higher Education Code,<sup>17</sup> he acknowledged concerns about "the current hyper-inflated wages of some Vice Chancellors", saying that he expected remuneration to be set "both fairly and transparently, according to agreed principles", and he concluded this part of the letter by stating, "I am therefore seeking parity and fairness; this is not about personal acquisitiveness".

27. The Dean went on to respond more directly to the letter of 11 January 2018, and the explanation of the decision not to conduct a review. He concluded his response about the living accommodation with this paragraph:

"If you are seriously suggesting that the obligation to live in the Deanery – and moreover to use it as a 'major centre'<sup>18</sup> for college, cathedral, school, university, diocesan and civic hospitality – is a 'perk' or benefit, and formed part of the reasoning by the Salaries Board for capping the remuneration of the role of Dean, then I think I must respond by saying that such reasoning is specious and discriminatory. Your inference is erroneous (and offensive)" (original emphasis).

28. With regard to the rent from the rooms in Fell Tower, the Dean said that he understood this to be "some modest means of recognising the valuable work that the spouse of the Dean undertakes on behalf of the House", and that generally Church of England clergy do not have their stipend capped or reduced if they rent out rooms in a vicarage or rectory.
29. He then wrote, "The rest of your letter, and its reasoning, I frankly struggle to make sense of". He said that other Heads of House were being paid considerably more than he was. He described the point that he had not been in post long as "puzzling, to say the least", adding "Your comment is therefore rather opaque; it lacks clarity and method". He described the point that the Board was concerned about "ratcheting-up" as "deeply troubling and pejorative"; and continued, "I also ask, is it really in your gift to determine that the Head of House here should be paid markedly below the average rate for Oxford Heads of House? Such a 'policy', would surely be for the common ownership of our Governing Body, with underlying principles discussed and agreed". After referring to the EBC tables, he continued, "I therefore repeat my question, to which I still do not have an adequate answer: for what reasons does the Salaries Board remunerate the Dean at a significantly lower rate than other Heads of House?"

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<sup>17</sup> See Appendix 3, para. 19.

<sup>18</sup> This expression was used in the particular "Further Particulars" for the post when a new Dean was being appointed in 2014.



30. There followed this paragraph, which I set out in full because it was heavily relied upon in support of charge 2(6):

“My preference is to resolve this matter internally, as you would expect. But I am concerned about the *process* of reasoning undertaken by the Salaries Board that you have outlined in your letter, which seems to contain some problematic contradictions, pejorative remarks, (e.g. “ratcheting-up”), and also makes some prejudicial and invalid assumptions (e.g. on housing). One possibility – a way forward – is for me to write to the Charity Commission and invite them to review the workings of our Salaries Board, so that we can reassure ourselves that we are indeed operating with transparency, parity and fairness and within the context of other comparable institutions. Another possibility would be to involve ACAS (Advisory, Conciliation and Arbitration Service), who are good at helping to resolve issues, before they develop into grievances”. (original emphasis)

After repeating that he did not regard his “engagement on this subject as a matter of personal acquisitiveness”, but about establishing fair remuneration for the post of Dean, he ended the letter by reiterating his “request for the Board to provide their reasoning for this” and saying that, “I express the sincere hope that we might resolve this internally – and cordially”.

31. Prof. Judson sent a brief reply dated 17 January 2018, because he felt, as he put in in his evidence to the Tribunal, that he had to be “very cautious” in what he wrote to the Dean. He explained that in his letter of 11 January 2018 he had set out the views of the Salaries Board when discussing the Dean’s salary on 1 November 2017; and said that “in accordance with our procedures” he would ask the Board at the next meeting to consider the points that the Dean had raised about the Board’s policies. He wrote, “I shall copy our whole correspondence since 1 November to the Board for that meeting so that your points and concerns are conveyed fully and accurately and can be properly considered”. Prof. Judson explained in his evidence to the Tribunal that he had understood that the Dean’s correspondence was addressed to him personally, and that he could not properly show it to others, including the other members of the Salaries Board; and that he considered that this was the best way to see if the Dean objected to his letters being circulated to the Board. On 17 January 2018 the Dean simply acknowledged the letter by email, and expressed the hope “that we might resolve these matters”: he raised no objection to the letters being circulated.
32. In January 2018, the Dean spoke to Prof. Simpson, who was both a member of the Salaries Board and in Hilary Term 2018 acting as Censor Theologiae while Prof. John Cartwright was on sabbatical leave. Their initial conversation was a brief exchange<sup>19</sup>; the Dean made clear

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<sup>19</sup> Prof. Simpson’s recollection was that this conversation and their subsequent longer conversation in the Deanery were on 17 and 18 January 2018. The Dean believed that they were earlier: in the week of 8 January 2018, and probably on 11 and 12 January 2018. The evidence is perplexing, but the exact dates are ultimately of no real importance. On the one hand, Prof. Simpson’s recollection is supported not only by his clear recollection of the context in which they spoke, but also because he secretly recorded the second conversation on his mobile telephone: a “screenshot” was put in evidence showing that the mobile telephone recorded the date of 18 January 2018. However, instruments of this kind can be inaccurate with regards to timing or dating. The Dean too had a clear, but different, recollection about the circumstances in which they spoke, and, on the face of it, his account is supported in that he sent Prof. Simpson a letter dated 17 January 2018, which appears

that he had concerns about how the Salaries Board was considering his remuneration in light of correspondence that he had been having with Prof. Judson, and that he might need to write to him [Prof. Simpson] about it in his capacity as Censor Theologiae. Prof. Simpson responded that it would be better for the Dean to write than to deal with it orally, if he felt that he needed to discuss it. The Dean recalled that in this conversation he referred to the EBC tables, of which he had recently become aware.

33. The Dean and Prof. Simpson spoke again in the Deanery. When they arrived there, Prof. Simpson switched on his mobile telephone to record the conversation without the Dean's knowledge: he explained that this was because he was concerned that the Dean was seeking to discuss with him privately matters in which he (the Dean) had a pecuniary interest despite his (Prof. Simpson's) membership of the Salaries Board.<sup>20</sup>
34. The Dean showed Prof. Simpson an EBC table, and asked whether he had seen such documents before; and Prof. Simpson replied that he had seen something of the kind. He then, first, pointed out that he felt that it put him in a rather difficult position to be asked, as a member of the Salaries Board, about the decision taken by the Board, to which the Dean responded that he too was in a very difficult position. Secondly, Prof. Simpson said that the tables did not take account of such considerations as housing provision and rent received from housing that had been provided. He explained that the Board had not conducted a review of the Dean's salary at the meeting on 1 November 2018. The Dean then said that he thought that he was being "misled", and that the Salaries Board was being misrepresented. He referred to Prof. Judson's letter of 19 December 2017 where it was said that the Dean's salary was determined "mainly historically, by applying the academic cost of living increase to the previous year's salary, but partly also by periodic review. Such reviews do take account of the remuneration of other Heads of House". Prof. Simpson reiterated that, as he recalled (not having his papers with him), the Board had not decided not to conduct a review. When the Dean suggested that he should write to Prof. Simpson about his concerns, Prof. Simpson responded that the Dean should write to the Board, and said that the Board could look again at its decision not to carry out a review. He agreed that the "gender issue" raised by the Dean about the Steward's salary was potentially serious. Prof. Simpson suggested that the Salaries Board should see the correspondence with Prof. Judson. The Dean responded that he thought that he needed to write to Prof. Simpson, and Prof. Simpson replied "right". He expressed impatience about the correspondence with Prof. Judson, and Prof. Simpson said that "it may be that [Prof. Judson] has been economical with telling you what it is that we're doing", but that it was hard to know without seeing the correspondence. The Dean explained that he did not want the matter to become "a grievance issue".

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to have been written after the second conversation: it refers, for example, to a conversation "a few days ago". Neither Prof. Simpson nor the Dean was trying to mislead me about this: neither would have had any reason to do so. It is unnecessary to make findings about the dates of these conversations, and I do not do so.

<sup>20</sup> I accept that explanation. The Dean suggested, in view of the emails between Prof. Hinc and Prof. Simpson of 17 and 18 December 2017 (see para. 18 above), that the real reason for Prof. Simpson making the covert recording was that he planned to let Prof. Hines and Prof. Judson listen to it afterwards. That is conjecture and no sufficient basis to reject Prof. Simpson's explanation.

35. In the Tribunal proceedings, the Dean criticised Prof. Simpson for being “rather opaque” in the conversation, and giving “some confusing tale about the difference between reviewing and not reviewing [his] salary”. I do not accept that criticism, having listened to the recording of the conversation and having read a transcript of it: Prof. Simpson, who had not anticipated quite what the Dean wanted to discuss, explained repeatedly that the decision of the Board on 1 November had been not to conduct a review at all, and so had not considered external linkage, which would have been in point if and only if a review had been carried out. However, it is the more understandable that the distinction seemed obscure to the Dean because he was unaware of the relevant written policy of the Salaries Board.

36. As was foreshadowed in the conversation, the Dean wrote a letter to Prof. Simpson, marking it “confidential”, and he attached to it his correspondence with Prof. Judson. A copy of the letter was sent to Prof. Judson. It is dated 17 January 2018. (Even if the second conversation took place on 18 January 2018, it is undisputed that Prof. Simpson had not read the letter before he and the Dean spoke.) The Dean made clear that he wrote to Prof. Simpson in his capacity of Censor Theologiae, and “in the hope that we might resolve some sensitive and quite serious issues that relate to the Salary [sic] Board”; and that he was sorry to do so, but concerned that the issues might become more acute. He explained his concerns were about the pay for the Senior College Offices, referring to both internal linkage and the question of the Steward’s “gender pay gap”. Describing the history of the matter, he wrote this paragraph:

“I have also been at pains to stress to [Prof. Judson] that the Salaries Board needs to have a clear set of principles that guides its reasoning, process and proposals. I have suggested that these might be *fairness, parity and transparency* – bearing in mind the context of charity law (and to which we are accountable, as a large charitable charity). These principles do need to be owned by Governing Body. I have become increasingly concerned that some of the reasoning that guides the current processes of the Salaries Board works with erroneous, problematic and prejudicial assumptions, and the Governing Body are unaware of this” (original emphasis).

37. The Dean then came to the decanal salary: he wrote that he did not think that it was “acceptable or fair” in terms of external linkage, saying that his point was not about “personal acquisitiveness” but “the principle of establishing the fair and right remunerative rate for a highly-demanding role”. He went on (i) to complain about the Dean’s pay being “out of kilter” in terms of internal linkage (“so unfair, I think”) and in terms of external linkage (“so again, not very fair”); and (ii) to repeat his argument that the living accommodation at the Deanery should not be brought into account. He continued that his “earnest hope [was] to resolve these matters internally, and cordially. I am, however, concerned that the discussions might be escalating to a point where we need third parties and external help to resolve these issues. I am of course acutely aware of how difficult that might be, were it to come to this. Which is why I seek your help as Censor Theologiae in this case – to see if we can find an amicable way of resolving this”. He suggested that the Salaries Board might adopt a principle that the College normally seeks to pay “something above the mean (or average) of other Oxford Colleges for their Senior College Officers...”.

38. He concluded the letter by apologising for troubling Prof. Simpson with the matter, and reiterating his wish for a fair and amicable resolution and his hope that there might be a principle that the Governing Body could “own”.
39. Prof. Simpson replied on 22 January 2018 in a letter marked “strictly confidential” that there was “little of substance that [he could] say at this stage”. He observed that Prof. Judson intended to put the correspondence before the Salaries Board at its meeting on 19 February 2018 “in the context of its planned review of its approach to the remuneration of senior college officers generally”. He suggested that in these circumstances, “processes must be allowed to take their course”. He pointed out that qua Censor Theologiae (as opposed to in his capacity as a member of the Salaries Board) he had no role in settling the salaries. He assured the Dean that he had not been misled by Prof. Judson in the earlier exchanges.<sup>21</sup> He reiterated that the Board’s decision in November had been not to conduct a review of the Dean’s salary and so “the Board has *not* yet conducted a review,” but the Board would reconsider that decision. He wrote, “If there is anything in your letter to me that you would like also to be brought to the attention of the Board as it decides whether to conduct a review, and (if it so decides) conducts a review, of your remuneration, then please let me know”. Thus, Prof. Simpson, far from suggesting that the Dean had corresponded excessively about his remuneration, invited the Dean to contact him again, both with regard to whether there should be a review and about what should be considered on a review.
40. The Dean replied in a letter dated 31 January 2018, again copying it to Prof. Judson. On 25 January 2018 he had sent it in draft to Ms Linieres-Hartley, writing in his covering email that his correspondence on “these matters” had “reached a natural end” and that the Salaries Board was to meet in sixth week of the Hilary Term, but that, whatever the decision on the Senior College Officers’ salaries, “the issue of the protocols and principles that inform such decisions needs some review and cannot be left to ad hoc or ad hominem responses. Hence my suggestion that we have a proper review that really gets the Salaries Board in a more compliant state than I think it currently may be”. Ms Linieres-Hartley replied that she did not feel dissatisfied with her salary, but was concerned about the “gender pay gap”. She also wrote that she agreed with the Dean’s expressed concerns about principles and procedures because “they do appear to not be as robust as they should be or as transparent as they are in other colleges”.
41. In his letter of 31 January 2018, the Dean sought confirmation that, since he would not attend the next meeting of the Salaries Board because of his conflict of interest, Prof. Simpson, as Censor Theologiae, would be taking the chair.<sup>22</sup> He reiterated his hope that the questions about the Steward and the Treasure would be “seriously and fully considered”. Thirdly, he made some points about his remuneration and external linkage. His final paragraph was this: “Clearly, it is ultimately up to the Salaries Board to determine what the value of the role of the Dean is in relation to the House. Ultimately, all I can do is work at the level that respects this evaluation. In considering these matters I respectfully ask that

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<sup>21</sup> I take this to be a response to what was said in the conversation in the Deanery. Nothing in the letter of 17 January 2018 suggested that the Dean considered himself misled by Prof. Judson.

<sup>22</sup> Prof. Simpson so confirmed by letter of 6 February 2018, adding that he had arranged for the Dean’s correspondence to be circulated to the Board.



the Salaries Board gives due consideration to the wide-ranging and extensive portfolio of responsibilities here, and in relation to those of other Heads of House in Oxford. And last but not least, I hope that you will not mind me reiterating my request that both the *process* and the *reasoning* to determine those salaries under consideration is clearly spelt out, and in such a way that it is compliant with current charity law and [Higher Education] codes of practice, and can therefore be justified and *transparently* owned by our Governing Body” (original emphasis).

42. In about late January 2018 the Dean also spoke to Prof. Hine and Prof. Cartwright about his remuneration and the Salaries Board. He showed Prof. Hine a document relating to external linkage, apparently an EBC table. He also mentioned to him that, unlike other members of the Governing Body, he had no grievance procedure available to him. Prof. Hine responded that the question of a grievance procedure was for the College’s Committee for the Revision of Statutes and By-Laws to consider, and that he could not comment about how the Dean’s remuneration compared with those paid by other colleges to their Heads of House.
43. On 31 January 2018 the Dean asked Prof. Cartwright to meet him to discuss a dispute that he was having with the Salaries Board about a review of his pay. Before the meeting he had sent to Prof. Cartwright a draft of a letter to Prof. Judson that he had written. Prof. Cartwright advised the Dean that, while the Salaries Board was still deciding whether to conduct a review, he should not write to Prof. Judson or take his proposal for a review to the Governing Body. During that meeting, the Dean said something to the effect that he could not be expected to do as much work as he was doing for the College in view of the amount that he was being paid. He also mentioned what he perceived to be a “gender pay gap” between the Treasurer and the Steward.
44. The Dean then spoke to Prof. Cartwright of replacing Prof. Judson as Secretary of the Salaries Board. Prof. Cartwright told him that he disagreed with the Dean’s interpretation of the By-Laws, and that he did not consider that tenure of the position of Secretary of the Salaries Board was subject to a five year limit.<sup>23</sup> There was also mention at the meeting of the Dean not having a grievance procedure: Prof. Cartwright and the Dean have different recollections of the details of what was said about this, but they are not important.
45. On 23 January 2018, Prof. Judson had written to the other members of the Salaries Board that he proposed to raise at the Board’s next meeting on 19 February 2018 two “substantial” matters, which were related and had been raised by the Dean: the decision not to review his salary, and the Board’s policies in relation to the remuneration of Senior College Officers. The Salaries Board met on 19 February 2018, the Dean being absent because of his conflict of interest, and it considered the salaries of the four Senior College Officers. The minutes record that the Board made these decisions:

- (i) That the Steward’s remuneration raised an “equal value” question about gender equality that was of vital and immediate concern, and legal advice

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<sup>23</sup> The Dean considered that Prof. Cartwright “reversed” the advice that he had given the Dean in November 2017 about the appointment of the Secretary of the Salaries Board: see Appendix 6 para. 7. I reject that suggestion. In November 2017, Prof. Cartwright had been concerned with the annual appointment of the Secretary by election, whereas in January 2018 he was concerned with eligibility for election.



should be sought about it. (This led to what I shall refer to as the “equal value review”)

- (ii) That there was no present need to review the remuneration of the Treasurer or the Development Director.
- (iii) That the Board’s policy “in relation to the remuneration of the Treasurer, the Steward and the Development Director should be articulated further and communicated to the Governing Body”.<sup>24</sup> (I shall refer to the review of this as the “general policies review”.)

46. The Board also decided that, “once it had concluded its review of its general approach to the setting of remuneration for the various senior officers, and the issues concerning the ‘equal value’ question in relation to the Steward, it would carry out a formal review of the Dean’s remuneration” in the Trinity Term, 2018. However, the minutes record that the Board “still essentially remains of the view it took at its last meeting that it would not ordinarily conduct such a review this soon after the initial appointment of a new Dean (i.e. less than four years after his initial appointment). It agreed to do so in these somewhat extraordinary circumstances because of the very apparent strength of the Dean’s own personal feelings on the matter. The Board was clear that that review would include consideration of all aspects of the remuneration currently received by the Dean (as it would in connection with the position of any other senior college officer) i.e. including housing provision/allowance, pension provision, retained rental income from the housing provision and so forth, that it would take legal advice before conducting the review, and that the review might or might not lead to an increase in the Dean’s salary”.

47. Prof. Judson wrote to the Dean the next day, informing him that the Board had decided to begin a “general review of its approach to the setting of the remuneration of the four senior college officers (Dean, Treasurer, Steward and Development Director)”. He assured the Dean that the Board took seriously a number of the issues that he had raised, and advised him of the decisions about the “equal value” review and about the Treasurer’s salary. With regard to his own (the Dean’s) remuneration, Prof. Judson wrote that the Board had agreed that it would carry out a formal review of it “next term” after completing the other two reviews. He explained the reason for this decision in terms similar to those minuted (and set out above), adding “You seem considerably upset by the Board’s decision not to have undertaken a review so far, and so the Board has agreed to undertake a review in the best interests of collegiality in all the circumstances”, and said that the review would include all aspect of the remuneration received by the Dean, mentioning specifically (inter alia) housing and income from rents.

48. The Dean responded in a letter dated 26 February 2018, which was marked “Strictly Confidential” and headed “Professor Lindsey Judson, Secretary, Salaries Board”. It was addressed to Prof. Judson (“Dear Lindsey”) and was copied to the other members of the

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<sup>24</sup> The minutes say that the review should be in relation to the three Senior College Officers other than the Dean. I infer, and Prof. Judson has confirmed, that he made a mistake in the minutes: certainly the Dean was told that the general polices review would cover policies relating to his remuneration, and the consequent review did so.

Salaries Board. He started by expressing gratitude that the Board had accepted that a number of the issues about which he had written were substantive and would be considered. The rest of his letter falls into two parts. First, he commented on specific points in Prof. Judson's letter. Thus,

- With regard to the rent from the Fell Tower accommodation, he suggested that it would be tidier if the equivalent of the rent were added to the decanal remuneration and the rent then paid to the College rather than the Dean.
- He referred to the external linkage of the Dean's pay, reminding Prof. Judson that he had asked for "some explanation as to why the Dean's remuneration ... is below the average for other Heads of House for Oxford", and adding that, while he appreciated that the matter was to be reviewed, there must be "some extant explanation in place for the current level of stipend".
- He asked how the review was to be conducted, raising such questions as whether he was to be interviewed.

49. In the second, and longer, part of his letter, the Dean set out a "more extended reflection" to "explain to Members of the Salaries Board something of the context in which my state of mind is situated". He made these six complaints about others in the College:

- About the lack of "care and support".
- That only he had been available to deal with a particularly difficult incident, and had had to do so at a particularly difficult time, on the day of the funeral of his brother-in-law.
- That, with regard to these matters, "colleagues" had failed "to take an appropriate share of responsibility for their failure of oversight or indeed to apologise", adding "... the ex-Censors collectively failed to take responsibility for these failings. Not one has ever apologised to me or my family for their failure of oversight [at the time of the incident]. This matter remains a serious, unresolved grievance".
- His additional workload because of increasing "malfunctioning of the Censors office", with "[r]outine tasks often ... overlooked". He particularly referred to "safeguarding obligations", giving one particularly serious safeguarding problem that he had dealt with.
- Failures with regard to reviews and appointments for academic staff, where, it was said, the College "now regularly f[e]ll behind", leaving him to pursue them; and resistance to his attempts to obtain additional supports in areas including human resources, public relations, and other matters such as "augmented Warden provision for junior members".
- Resistance to refurbishment of the Deanery kitchens, which he said was undertaken only "when it became clear it might fail basic health and safety criteria".

50. The Dean continued: "There is an underlying pattern here, and that partly explains my strength of feeling. It grieves me to say this as Head of House, but it amounts to dealing with what I can only describe as an underlying 'culture of mean-spiritedness'. Given the comparative wealth of the House, this is quite inexplicable. Yet at its most basic, this culture manifests itself in a rather mean-spirited pecuniary outlook – going well beyond any kind of responsible fiscal prudence, and tipping into a kind of ... institutional miserliness. Requests

for recognition in remuneration for colleagues, or for additional support are treated begrudgingly, as a nuisance or with indifference – despite valiant championing of cases by the relevant line manager or senior college officer. There is a kind of strange ‘classism’ at work here – an ‘upstairs-downstairs’ attitude, where some of our academics seem to consistently subjugate our administration. Indeed, some investment in ensuring the administrators are denied any status or recognition as professionals”. The Dean complained that the morale of College officers and administrative staff was affected, and that in his own case “it has taken a full eight months to secure a review of remuneration, and has left a correspondence trail that runs to over two-dozen pages. In all this, I have not received the smallest hint – not even a single sentence – of gratitude for my work in such correspondence. No thanks; no appreciation; no recognition. This does seem to be our normative, alas”.

51. In the last paragraph of the letter the Dean said that, in copying the letter to members of the Salaries Board, he hoped that “they will gain some insight into [his] work through a small specimen range of pressures, incidents and situations”, and that he hoped that “you can begin to appreciate that my ‘strength of feeling’ has some real cause”. He recognised that the Salaries Board could not “do much to address this”, and said that he did not ask them to do so. He concluded, “some of the matters that I’ve flagged require more substantial work if they are to be addressed – and ultimately overcome, if we are to achieve a wholesome culture-change here, cultivating the kinder and more humane character within our community that many of us seek”.
52. When they received this letter, Prof. Judson and Prof. Simpson discussed together how they should respond to it, and, although the letter was marked “Strictly Confidential”, they decided to tell other ex-Censors about the second part of it because it raised matters outside the remit of the Salaries Board.<sup>25</sup> Prof. Simpson’s evidence to the Tribunal was that, while they “were very conscious that the ex-Censors were almost certainly not the right body formally to address [the Dean’s] wider concerns”, they thought that they had little choice in view of the Dean’s views about their “conduct and role”. So it came about that the second part of the letter was discussed at a meeting of ex-Censors on 13 March 2018.<sup>26</sup> They were concerned about its tone and the Dean’s apparent perception of their role; they considered sending the Dean a reply, but in the end they did not do so.
53. At the meeting on 19 February 2018, the Board had been concerned about how the correspondence regarding the Dean’s remuneration had developed. The external members of the Board had all expressed their support for Prof. Judson and Prof. Simpson, and dissatisfaction with the Dean’s correspondence. It was decided that one of them, Mr Crisp, should speak to the Dean about it, and that Prof. Hine should be asked to accompany him.

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<sup>25</sup> Prof. Hine saw the whole letter at about this time. He was shown it by Dr Brian Young, the Senior Censor, who had, apparently, come to have a copy. Prof. Hine’s evidence to the Tribunal was that he felt that he had no alternative but to consult other ex-Censors about it, and did so. He showed them the letter in so far as it related to College governance, having excised the parts that referred to what he called “the pay dispute”.

<sup>26</sup> It is not entirely clear, and it is unimportant, whether it was held at the instigation of Prof. Hine or of Profs Judson and Simpson, or whether they all called for it.

On 20 February 2018 Mr Crisp spoke to Prof. Hine by telephone, and on 1 March 2018 they met to discuss the proposed meeting with the Dean. Mr Crisp spoke of the external members' concern about the tone and approach taken by the Dean in his correspondence. He explained that they appreciated that the Dean felt strongly about the issues, but they wanted exchanges to continue with more restraint. Mr Crisp then spoke with Profs Hine, Judson and Simpson in the afternoon of 2 March 2018. It was decided that Prof. Hine should not go with Mr Crisp to speak with the Dean, and in the event Mr Crisp went with another of the external members of the Board, Dr Asquith.

54. On 3 March 2018 Mr Crisp reported to the other external members of the Salaries Board on these conversations. He recorded that he had told Prof. Hine that he thought that the planned meeting with the Dean should "only be about the approach and tone taken by the Dean in his correspondence"; and that "[t]he external members appreciated that the Dean felt strongly about the issues", but they criticised his presentation of them and the pressure that he had put on Profs Judson and Simpson.
55. The meeting with the Dean was held on 7 March 2018 at the Deanery. After the meeting, Mr Crisp wrote a note of the exchanges and circulated to the other members of the Salaries Board apart from the Dean.<sup>27</sup> The meeting was calm. Mr Crisp and Dr Asquith did not discuss the policies, processes or decisions of the Board, but they explained to the Dean their view that his recent letters had put inappropriate and undue pressure on individual members of the Salaries Board. They said that "the ongoing discussions must be conducted in a calmer way for the good of all concerned".<sup>28</sup> The Dean agreed that the correspondence was not something to be proud of, and explained that this was partly due to his feeling that he had been "brushed off" and his points had not been heard. The external members acknowledged that he might have felt this, but said that in any event discussions should be continued in a calmer way, and the Dean agreed. They also said that the Salaries Board had agreed that it would try to clarify its policies and processes, and communicate more clearly the reasons for its decisions.
56. Towards the end of the meeting the Dean raised the question whether members of the Salaries Board, in particular the Secretary, had served for more than their permitted terms. After the meeting, on 8 March 2018 Mr Crisp sent the Dean an email in which he said that, in his view, the restriction on eligibility to serve more than five years did not apply to the Secretary, and said that Dr Asquith and he were "content to leave things as they are for the time being".
57. There was no suggestion in Mr Crisp's letter of 3 March 2018 or at the meeting that the external members took exception to the fact that the Dean had engaged in debate with the Salaries Board, or that they thought it inappropriate for him to pursue arguments about his remuneration. Nor did they criticise the Dean for writing too many letters to Prof. Judson and Prof. Simpson, or for writing to Prof. Simpson as Censor Theologiae about Salaries Board

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<sup>27</sup> The Dean later complained that Mr Crisp had taken a note, and that he was unaware of it. That complaint does not bear on what I have to decide, and I do not need to consider whether it was justified.

<sup>28</sup> I take this wording from Mr Crisp's note of the meeting.



matters. Nor did they object to the Dean including in his correspondence any of the points about which he had written, nor to him raising at the meeting the question about how long Prof. Judson had served as Secretary of the Salaries Board. Their concern was only that he had adopted an inappropriate tone in his letters.

58. After the meeting, the Dean sent emails to Profs Judson and Simpson. He wrote that he understood that the correspondence had “at times, bec[o]me intemperate – and this no doubt reflects some strength of feeling on [his] part”. He expressed regret about that, and regret that this “may have been the cause of some stress to you both”. He tendered an apology for that to each of them. Having discussed these letters between themselves, Profs Judson and Simpson both replied briefly, thanking the Dean and expressing their appreciation that he had written.
59. The next day, on 8 March 2018, the Dean sent Prof. Judson another email, in which he asked for clarification of a report that he (Prof. Judson) had written to the Governing Body in 2010 and was later reflected in the policy adopted in 2011. Referring to the starting salary for a new Dean, Prof. Judson had described it as “current practice” that a new Dean was normally offered the same salary as his or her predecessor.<sup>29</sup> The Dean asked where the practice had been set out before 2010, and where it was reported to and agreed by the Governing Body. Prof. Judson discussed with Mr Crisp how he should respond, and replied on 9 March 2018, explaining that the report was “formulated over the course of 2009, in consultation with members of the Statutes Committee, which was working on the process of registration with the Charity Commissioners in the light of the ending of Oxbridge Colleges’ status as exempt charities ...”.
60. The tone of the Dean’s email was not criticised, nor could it be. It was said, however, to be inappropriate for the Dean to raise this question so shortly after he had apologised. It was also said that the Dean was asking about a practice that ante-dated the policies approved by the Governing Body some time before his appointment. I am not persuaded by these criticisms. The apologies were for the tone adopted in earlier communications, and there was no suggestion that the exchanges should cease or be put into abeyance. The Dean’s question might have been unreasonable had he known about the written policies of the Salaries Board and that the Governing Body had endorsed them in 2011, but I accept his evidence that he was unaware of them in March 2018.
61. The next letter of the Dean to which the charges refer was dated 21 March 2018 and addressed to Dr Asquith. (He wrote a similar letter to Mr Crisp, but since the charges refer to the letter sent to Dr Asquith, I too shall do so.) On 27 March 2019, Dr Asquith sent it on to Prof. Judson and asked him to circulate it to the rest of the Salaries Board. The Dean thanked Dr Asquith for the meeting on 7 March 2018, and said that “as promised” he wanted to “reiterate and clarify the main issues that I think need to be addressed as the Salaries Board meets next term”, which he said were not about the remuneration of the Dean, Treasurer and Steward, but were “more general to the Salaries Board”. He then

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<sup>29</sup> See Appendix 3, para. 14.



referred to various codes of practice, namely the Charity Governance Code, the Higher Education Code of Governance, 2014, the CUC Higher Education Remuneration Code, and also a CUC Higher Education Remuneration Code consultation document, commenting that he thought that “we fall somewhat short of these requirements, and that we may be open to challenge on a number of fronts”. He summarised his point thus: “I respectfully ask that the Salaries Board gives due consideration to the *process* and the *reasoning* to determine those salaries now under consideration. That such processes and reasoning – both in their policy and in specific application – are clearly spelt out, and in such ways that are compliant with current charity law and [Higher Education] codes of practice. Moreover, that any determinations that you reach are ultimately *fair* – to the role, and to the post-holder. And that the salaries so determined by the Board can therefore be justified, published and *transparently* owned by our Governing Body. Thank you.” (original emphasis).

62. The Dean concluded the letter by reverting to the question in his letter of 8 March 2018, which had not been answered in Prof. Judson’s reply: he said that it would be helpful if the Salaries Board could “highlight where, in a minute or report[ [the ‘current practice’ about the starting salary for a new Dean had been] set out and agreed by the Governing Body” before 2010.
63. After the meeting on 9 February 2018, the Salaries Board, through a sub-group comprising Prof. Judson, Prof. Simpson and Mr Crisp, instructed Penningtons Manches, solicitors, to give advice relating to the two reviews, the equal value review and the general policies review. The Board met again on 3 May 2018: it agreed a timetable for further discussions with further meetings on 22 May 2018 and 4 June 2018, the second to be devoted solely to the remuneration of the four Senior College Officers, while accepting that it should relax the timetable if more time was required. The Board considered the Dean’s workload, and recommended that he discuss it informally with a senior member of the Governing Body, Prof. Cartwright, and a senior member of the Chapter, Prof. Graham Ward, the Regius Professor of Divinity. By a letter to the Dean of the same date, Prof. Judson reported these decisions, other than the decision about possibly relaxing the timetable.
64. Accordingly, after the meeting Profs. Cartwright and Ward were asked by Prof. Judson to speak to the Dean about the work that his position required. They agreed to do so, but when Prof. Ward told Prof. Cartwright that the Dean had previously declined to discuss his workload, they decided not to pursue the matter, and Prof. Cartwright so advised Prof. Judson.
65. The Dean wrote Prof. Judson another letter dated 21 May 2018, which Prof. Judson received before the first of the planned meetings on the morning of 22 May 2018. It was marked “Confidential to the Salaries Board”. The Dean acknowledged the letter of 3 May 2018, and confirmed that he would attend and chair the meeting on 22 May 2018 only for those matters where he was not conflicted, and would absent himself entirely on 4 June 2018. He opined that “it would be reasonable to assume that the Dean’s remuneration ought to be based on a clear policy relating to the breadth and weight of the job”, and ought to be “clearly benchmarked against other heads of college”, while taking into account other

considerations that were particular to Christ Church. He said that there might be “future opportunities to look at the role and workload of the Dean”, but that they should be dealt with separately from the issue of remuneration. He then “gently remind[ed]” Prof. Judson of “three pending questions for the Board”. The first was the question raised in his letter of 8 March 2018 about documentation of the “current practice” referred to in the report of 2010. Secondly, he asked why this policy, assuming it to exist, applied only to the deanship and not to other offices. Thirdly, he observed that the policy appeared to ignore the remuneration for comparable roles at other colleges, and asked the reason for this. He continued, “May I also respectfully remind you that if the Salaries Board does wish to stand by their current evaluation of the remuneration of the role of the Dean, that this will need to be explained and justified in line with current policy now required by the Charity Commission [sic]. The reasoning for this policy will be a published rationale, and owned by Governing Body”. The Dean concluded his letter by saying that he would give careful thought to the suggestion about the decanal workload, but explained that he only raised the question to draw attention to “the relationship between the diverse and intense demands of the role and the actual remuneration...”. He was willing to discuss the nature of the role, but only after the process of reviewing the salary had been completed.

66. After the Dean had absented himself from the meeting of 22 May 2018, the Board expressed surprise, according to the minutes, that the Dean’s letter had been received so shortly before the meeting, and “concern about the workload that the Dean’s correspondence had generated for members of the Board”. The Board agreed that the equal value review should be sent to the Treasurer, the Development Director and the Steward and that the general policies review should be sent to those three officers and the Dean, so that they could submit any comments to the Board before its meeting on 4 June 2018.

67. Accordingly, on 25 May 2018 Prof. Judson sent the Dean a draft of the general policies review. In his covering letter he explained that the Board was “currently agreed” that the report would be used for the intended review of the Dean’s remuneration, which it hoped to conduct at its meeting on 4 June 2018, and that the outcome of the meeting and any changes to the draft would be recommended to the Governing Body, which was scheduled for 13 June 2018. He told the Dean that the Board considered that the Dean should “have the chance to comment on any aspect of th[e] report before it [was] finalised and submitted to Governing Body and before the review of [his] remuneration [was] conducted”. He asked the Dean to send any comments by 9.00am on 4 June 2018, and said that the Board would consider them before it finalised its report that afternoon. He promised that, when the Board had conducted its review, he would send the Dean a copy of its report before it was circulated to the Governing Body.

68. The draft review ran to 14 pages. The first section explained “The context of the review”. The second section set out “Existing policy”, and it referred to, and quoted at length from, the existing policies document<sup>30</sup>. The third section was headed “The review” and contained

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<sup>30</sup> In fact, it quoted the wording of the 2017 revision of the policies, but mistakenly stated that it had been approved by the external members of the Salaries Board in 2011. This error was repeated later in the

the Board's proposals. It was divided into three parts: (i) a proposal of principles and policies relevant to all four Senior College Officers; (ii) the review of remuneration of the officers other than the Dean; and (iii) proposals concerning the Dean.

69. The general policies and principles that the review considered included these:

- That the "overarching obligation of the Board and of the Governing Body" be "to remunerate fairly, but at no higher level than is necessary to recruit and retain the right people for the various tasks required taking all relevant factors into account".
- That any policy about remuneration should be comprehensive, and take account of benefits such as the provision of housing.
- With regard to the salary element of remuneration, that there should not be internal linkage between the offices.
- With regard to external linkage, that there should not be a policy that Christ Church pay something above the mean of other Oxford colleges.
- That regular performance assessments should not become part of Christ Church's normal processes.

70. The review recommended no significant change be made to its existing policies regarding the Treasurer, the Steward and the Director of Development.

71. With regard to the Dean's remuneration:

- The review said that the Dean had raised "a number of concerns" about the policy of periodical monitoring to consider how the remuneration compared with that of other Heads of House, and that the Salaries Board "agrees with the Dean that this relatively new element of its policies requires more detailed articulation".
- The review considered internal linkage in relation to the Dean, and rejected it as inappropriate. In its discussion of internal linkage, the review considered whether the Dean continue to be a member of the Salaries Board and concluded that he should.
- The review considered the appropriate approach to external linkage when determining the Dean's remuneration. It considered that, given the Dean's office was to head an institution that was both religious and educational, it was appropriate that any consideration by way of external linkage should have regard not only to the remuneration of other heads of houses but also that of senior appointments in the Church of England. In this context the review advocated "benchmarking against similar Church of England roles (Deanships of other Cathedrals of a similar kind, for example, as well as other senior church appointments such as the Archbishop of Canterbury and the Bishop of London)", but that the Board should have "full discretion as to how this is done". It was observed in this regard that, since it recruits its Head of House from the clergy and the remuneration would increase the earnings for applicants, Christ Church had not had the difficulties in making appointments that had been faced by other colleges, which recruit from elsewhere. The Board also concluded that "it will in future routinely conduct such a benchmarking exercise at the time of appointment of a new

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document, where it was said that the policy of periodically monitoring "to consider whether the Dean's salary remains comparable" was adopted "[i]n the time of the previous Dean".

Dean. Other than that, the Board does not normally expect to conduct such reviews more frequently than every four years”.

72. The Dean told the Tribunal that it was only when he received the draft review that he learned that there were Salaries Board policies for the remuneration of Senior College Officers, which had been approved by the Governing Body. It is surprising that it is not reflected in his response that he was previously unaware of this, but I accept this evidence<sup>31</sup>.
73. On 29 May 2018 Dr Young, as the Senior Censor, sent an email to Prof. Simpson in which he said that the Censors noted that his membership of the Salaries Board had been extended by a year, involving the suspension of a By-Law<sup>32</sup>, and that they were concerned about the “gender balance of this committee”. (One of the external members was female, and the other eight members of the Salaries Board were male.) He asked Prof. Simpson to “help clarify this matter as soon as possible, since [they were] obviously keen to approach a possible candidate to serve on the Board”. Prof. Simpson forwarded the email to Prof. Hine, describing it as a “rather chilling message” and suggesting that the “Timeline” showed that the Dean was behind, or at least involved in, an attempt to remove him from the Board. (“Dean gets [Salaries Board] position paper on how to approach his salary reviews last Friday. [Dean and Censors] meet this morning. [He] gets his marching order from [the Censors] this afternoon!”.) Prof. Hine replied that it was possible that the email might result from Prof. Jones being “on her feminist kick”, but that he thought that it more likely that both she and the Dean were behind it. He then wrote “So war then ....”. It was suggested that Prof. Hine was declaring “war” against the Dean, but the words are ambiguous: equally, they could mean that it appeared that that the proposal to remove Prof. Simpson from the Salaries Board would lead to a serious dispute (or “war”). Prof. Hine told the Tribunal that he intended the latter meaning, and there is no proper basis to reject this explanation. However, it is apparent from the emails that Prof. Judson was “furious” about Dr Young’s proposal.
74. The Dean submitted his comments on the draft review by a letter dated 1 June 2018, addressed to Prof. Judson. He attached three pages on detailed comments on specific paragraphs, followed by some “Endnotes”, which he described as highlighting “some sample concerns”.
75. In his letter, the Dean wrote that he had looked at the report with some care and was “currently unable to support the recommendations ... and the parameters of the document as a whole”. He considered that, specifically in relation to the role of the Dean, the report appeared “to contain some quite puzzling and disconcerting assertions, assumptions and equivocations”, and also “several serious factual errors and proceed[ed] on the basis of these misunderstandings”. The Dean then referred to a “real duty of care to [his] successors, and to the office of Dean, as well as to our own sound governance as an institution”. He said that he had not received the report until the May bank holiday weekend and so had had “little time to work through it, and no time to take appropriate advice – or to even think how this might be done”, and so “at present, [he was] not able to

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<sup>31</sup> See paras 20, 21 and 22 of my Decision.

<sup>32</sup> See Appendix 3, para. 2.



respond more fully to the proposals ...". He went on to express this view and to make this suggestion: "I ... think that we may have now reached the point, where any further exchanges in a detailed correspondence cannot resolve the differences between us. In view of this, I do think it may be wise and appropriate to refer these matters to relevant bodies and external authorities for further clarification, scrutiny, comment – and if necessary, action". He suggested mediation as an alternative, in this context observing (i) that he had had "no advocacy or any kind of real support in this whole process which began almost a year ago" and (ii) that the College's Statutes and By-Laws provided no grievance procedure for a Dean. He concluded the letter as follows: "If the Board wishes to explore the possibility of moving towards some mediated resolution, we can give this some further thought. If the Board wishes to decline this suggestion, I think I will be duty-bound refer these matters and issues on elsewhere, as indicated (sic). Either way, I really don't think it would be sensible to table the document you have sent to Governing Body in 8<sup>th</sup> week [sc. for the meeting on 13 June 2018]".

76. The Dean's detailed observations about the report in the attached notes referred to the external members of the Salaries Board. He said that it would be good to see their written remit, and wrote this by way of an "endnote": "There is a question to be addressed as to how genuinely 'external' Old Members can be,<sup>33</sup> given that their concern for the reputation of the House might influence any decisions relating to individual circumstances, and the clear conflict of interest this could cause. I am concerned that a Board comprising three Old Members and four Official Students is almost bound to put the interests of the institution before any concern for an individual. To some extent that is inevitable, - and of course right that they put the interests of the charity before an individual employee. But it also inculcates a virtually unavoidable conflict of interest on matters of fairness and justice". He observed that some other Oxford colleges have salaries boards comprising only independent, external experts, which "avoids any personal and rather ad hominem judgments being made, which I fear our present modus operandi has been unable to avoid in this case".
77. He also raised objections to the key recommendation about the Dean's pay, that account be taken of external linkage to pay for clerical offices. He challenged the information on which this proposal was based, and asserted, for example, that it took no account of "the wider (sizeable) international 'market' for Anglican clergy with relevant experience in education...".
78. Prof. Judson sent Prof. Simpson a copy of the Dean's letter before circulating it to other members of the Salaries Board, and they discussed how to reply to it. However, Prof. Simpson forwarded it to Prof. Hine, without telling Prof. Judson that he was doing so, and notwithstanding that the Dean had headed the letter, "Confidential to the Salaries Board" and the comments "Strictly Confidential ... ". Prof. Hine replied to Prof. Simpson: "The request to the [Salaries Board] not to present the document seems to me to be further improper decanal intervention in the work of the [Salaries Board] pertaining to a clear decanal interest. I would say that the report should go to the [Governing Body] together

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<sup>33</sup> There were three external members of the Salaries Board. At the relevant times, all were alumni of the College.



with this letter. I'd be very against compromise at this stage. He started this. He asked for a new procedure. He doesn't like the outcome. Let him take the consequences. As for a duty of care, I despair. So should [the Governing Body]".

79. At its meeting on 4 June 2018 the Salaries Board approved reports that had been prepared on the equal value review and the general policies review, in the latter case with some minor revisions that are irrelevant for present purposes. The Board also agreed that (as it is put in the minutes), "it is essential that the Governing Body be made aware of the extent and depth of the Dean's criticisms of the Board's review; that in consequence it agreed that the Dean's correspondence with the Board, together with the note by Dr Asquith and Mr Crisp of their meeting with the Dean, be circulated (after suitable redaction and removal of material) to the Governing Body together with the Board's review paper". In light of "the Dean's attitude to the Board's proposed policies on the remuneration of senior College Officers", the Board deferred its intended review of the Dean's remuneration until the Governing Body had approved its terms.
80. Prof. Judson sent a reply to the Dean's letter of 1 June 2018, which he had drafted with Prof. Simpson. It said that at the meeting the Board had considered the full correspondence and the Dean's comments on the draft review, and reported the decisions that it had reached. The letter explained that, despite the Dean's expressed views, the Board had thought it right that the Governing Body make a decision "without unnecessary delay". It continued, "The Board note[d] that Statute XXXVI.5 provides for the possibility of an appeal procedure for you (by way of an appeal to the Visitor) should you feel aggrieved by what the Governing Body decides".<sup>34</sup> With regard to the suggestion of mediation, Prof. Judson wrote that the Board considered that, without a formal decision by Governing Body on the recommendations of the review, there was no dispute to be mediated.
81. The letter went on to explain that the Salaries Board proposed to place before the Governing Body meeting on 13 June 2018 all the exchanges between the Dean and the Board "since 17 December 2017" (with "material which concerns other individuals too directly or which is irrelevant" redacted or removed), together with the note of the meeting of 7 March 2018 and "some background material". The intention was to send out these documents, together with the general policies review, on the morning of the Friday before the meeting (8 June 2018), when conventionally papers for Governing Body meetings are circulated. Noting that the Dean had referred to "sample concerns" in his letter of 1 June 2018, it was suggested that, if he wanted to make further comments on the review, he send them to the Secretary to the Governing Body in time for circulation with the other Governing Body papers or for separate circulation on Monday 11 June 2018.
82. The letter concluded as follows: "[Prof. Simpson] and I would be very willing to meet you later this week to discuss the process and how it will need to be handled at the meeting of

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<sup>34</sup> It was agreed before the Tribunal that the Board was wrong about this because there is no appeal to the Visitor where the question concerns the employment of a member of the academic staff: see Appendix 3, para. 6.

the Governing Body ... . We note what you say about legal advice in your letter of 1 June,<sup>35</sup> but we understand that you have in fact recently taken formal legal advice in connection with matters pertaining to the Policy Review, which was paid for by the college. We would also be happy to discuss this matter further with you”.

83. The Dean acknowledged this letter on 7 June 2018. He said that, while he remained unhappy with the general policies review document “as a whole”, he would “abide by the decision of Governing Body. If the Policy Review is adopted, I would regard the matter as closed”. Referring to the suggestion that he meet with Profs Judson and Simpson, he replied that he was willing to meet them, but wished to have someone, ideally a member of the Governing Body who was not on the Salaries Board, to support him, or otherwise to “draw on expertise externally”. He wrote that he had not taken legal advice about the general policies review, and that advice that he had taken, “with the knowledge of the Censors, related to an interpretation of our Statutes and by-laws. I took this advice in the interests of good governance of the House and consulted a colleague from the Charity Commission. The law firm were clear that they could only advise the college, not individuals – and counsel was sought on that basis”.
84. The Dean went on to say that he did not consider it “necessary or appropriate to copy and circulate any corpus of previous correspondence ... which was all marked ‘Private and Strictly Confidential’, some of which is highly sensitive and personal, and never intended (on my part) for wider circulation”.
85. He enclosed with his letter a draft of his note to the Secretary of the Governing Body, Ms Helen Etty. The note explained that he had been offered only five working days to respond to the draft review. It continued, “I have some initial concerns about the accuracy, range and type of information that is drawn upon by the Board in framing the recommendations. I also question whether trying to resolve these issues in the 8<sup>th</sup> week of Trinity Term is really wise. I would have liked more time to respond to this Review, and if needed, for further consultation and conversation, in order to achieve some degree of consensus. I hope Governing Body will be able to understand this. But if Governing Body wishes to accept the Policy Review as it stands, and set out by the Salaries Board, I will of course accept that”.
86. The sub-group of the Salaries Board, Prof. Judson, Prof. Simpson and Mr Crisp, took legal advice and decided that, in view of the note that the Dean proposed to send to Ms Etty, it was not necessary, as matters then stood, to circulate the correspondence to the Governing Body. Prof. Judson replied to the Dean in a letter dated 8 June 2018, and so advised the Dean. He said that the Salaries Board did not believe that it would need the Dean’s consent to circulate the correspondence, but thought it unnecessary to do so in order for the Governing Body to consider the questions of policy in the review. He said that the Board recognised and shared the Dean’s concerns about “the personal aspects of some elements

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<sup>35</sup> In fact the letter referred to “advocacy” and “support in [the] process”, rather than to legal advice. See Appendix 6 for an account of the legal advice that the Dean had taken.

of the correspondence", and that he would send the Dean "next week" the "redacted materials that we had begun to prepare", inviting the Dean's comments.<sup>36</sup>

87. With regard to the Dean's response about the legal advice that he had obtained, Prof. Judson wrote, "I am sorry if we are wrong about this, but the invoice [for advice] we have seen refers to 'advice provided in relation to best practice guidance of regulators in relation to the manner by which salary reviews might be conducted'. As we now understand from you that this advice was taken on behalf of the college and not for you personally, could you please send a copy of the questions asked and of the advice received to me?".
88. Blake Morgan had not given any legal advice in writing. As for the request for a copy of the questions, the greater part of the Dean's briefing paper dealt with "micro issues" that they had declined to discuss. However, the Dean did not explain this to Prof. Judson: having discussed the position with Dr Young,<sup>37</sup> he decided that to do so would aggravate the febrile atmosphere in the College, particularly given the Censors' part in the discussions about Prof. Judson's long tenure as Secretary of the Salaries Board.
89. Prof. Judson did not comment on the draft note to Ms Etty. In any case, on 8 June 2018, before receiving Prof. Judson's letter, the Dean had sent her a note in the terms of the draft. Later that day, the Dean wanted to make some changes to the note and to adopt a more conciliatory tone. He wished the note to express thanks to the Salaries Board for their work on the review, to state that there was much in the review with which he concurred and to say that he would have "preferred a little more time to respond" and, if necessary, "slightly more consultation and conversation". However, the original version of the note was sent to the Governing Body, and the revised version was not. I am unable on the evidence to make any finding about the reason for this, but it seems to have been a matter of administrative convenience. Therefore, the Dean asked Prof. Cartwright, who, as Censor Theologiae, was to chair the Governing Body meeting after the Dean had absented himself for discussion of the remuneration matters where he had a conflict of interest, to convey to the meeting a message in which he thanked the Salaries Board for their review and acknowledged that the recommendations of the Salaries Board were entirely a matter for the Governing Body to decide.
90. Before the Governing Body meeting on 13 June 2018 there were exchanges between Prof. Judson, Prof. Simpson, Prof. Hine and others about how it should be managed. On 9 June 2018 Prof. Simpson received an email from Mr Sternberg, who was unable to attend the meeting. He expressed the view that there should not be an altercation or a no confidence motion<sup>38</sup> because "Too many people are unaware of this situation, and if it were sprung on them next [Wednesday] who knows which way it would go". He said that the Dean's letter to Ms Etty was inaccurate "from what I understand" because, although he had faced a deadline for his comments on the draft review, he had been engaging with the Salaries

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<sup>36</sup> There was no evidence before the Tribunal when the Dean was provided with a bundle of redacted documents, but it appears that he had seen a "bundle" with redactions at some time before 2 July 2018: see para 122 below.

<sup>37</sup> The Dean did not recall when giving evidence to the Tribunal whether he had also spoken to Prof. Jones.

<sup>38</sup> In fact, as Prof. Cartwright confirmed in his evidence to the Tribunal, a "no confidence motion" has no part in Christ Church's governance.

Board directly for “a considerable period of time”, and the Dean’s note could not be “allowed to stand as a record of events”. He also said that all members of the Governing Body were entitled to see the correspondence between the Dean and the Salaries Board, and he wished them to do so: “It seems to me vital that we get sufficient numbers to win a no-confidence vote, which means buying (say) two weeks in which all members of [the Governing Body] get to see all relevant materials to make an informed judgement. It also becomes two weeks in which colleagues can have explained the breakdown and be lobbied. Those are my thoughts: get the breakdown aired and then have two weeks gap for absorption of materials we don’t all have. The situation is horrible and his [sc. the Dean’s] position is untenable”.

- 91 Prof. Simpson replied quickly, and copied his reply to Prof. Hine. He asked that his reply be deleted after it had been “digested”: his explanation for this request, when he was asked before the Tribunal, was that he was stressed. He replied that he agreed with Mr Sternberg that “we may need time to roll the pitch here – although we may not have it”. He explained that the sub-group of the Salaries Board had decided, albeit by “a hair’s breadth”, not to circulate the correspondence, and said that the “real reason ... was that the Dean offered, if we did not circulate the full correspondence, to send the letter to [Ms Etty] which you mention!<sup>39</sup> And we thought this too good to miss – and without risking offending colleagues by leaving ourselves open to the criticism of having acted precipitately”. Prof. Simpson then referred to drafting a document “on timing” (which became “document 3”), and said that the “real focus” at the Governing Body “at any rate to begin with ....should be on a careful comparison between the two accounts contained in Document 3 and the Dean’s letter to [Ms Etty]...”.  
  
92 Prof. Simpson continued, “If [the Governing Body] feels that it needs to see some of, or even the full, correspondence to make sense of it all, we shall readily agree (although it will then be their decision, rather than ours, which is also better); and our present intention is to have multiple copies of the redacted correspondence available there and then...”.<sup>40</sup> Prof. Simpson concluded by saying that “we” would not be “pressing for a confidence vote; that must be for others – although we would quickly join in I am sure if the wind was in the right direction”.  
  
93. On 11 June 2018 there was a meeting of the ex-Censors, and after it Prof. Hine, who had joined it by telephone from Italy, reported to Mr Sternberg that it was “Basically quite a good meeting”, and that “We are approaching a narrative that might just work”. Prof. Hine explained to the Tribunal that he was referring to a “narrative” that the history of the general policies review raised “governance issues which the Governing Body might want to consider”.

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<sup>39</sup> To my mind, this distorts the exchange between the Dean and the Salaries Board. The Dean did not offer to send the letter to Ms Etty conditionally upon the correspondence not being distributed. He simply sent a draft of the letter that he intended to write and said that he saw no need to circulate the correspondence.

<sup>40</sup> Profs Judson and Simpson did indeed prepare and have ready at the time of the meeting redacted copies of the correspondence.



94. Against this background, therefore, there were prepared before the Governing Body meeting:

- Copies of redacted correspondence, including Mr Crisp's note;<sup>41</sup>
- Document 3; and
- An email from Mr Sternberg designed to be read to the Governing Body meeting.

95. Document 3 was a note from the Salaries Board, drafted by Prof. Judson and Prof. Simpson. In it the Board expressed its view that, although the Dean in his letter to Ms Etty had indicated that he would have liked more time to prepare comments on the review, he had had "the opportunity to put forward proposals and express his views, because he has been engaged in detailed correspondence with the Board since December 2017 as to the matters that the Board should take account in the Review". It set out the history whereby the Dean was sent a draft of the review and submitted comments. It also explained that the Board decided to show the review to the Dean and other Senior College Officers in the interests of transparency and fairness, although it had not been obliged to do so. It suggested that, if the Governing Body wished to defer a decision on the review, it would still be desirable to have an initial discussion to inform the Board's thinking.

96. Mr Sternberg sent his email to Prof. Cartwright on 12 June 2018, asking that it be read out at the meeting. He had sent a draft of it to Prof. Simpson and received his comments before settling a final version. He referred to documents that had been circulated to members of the Governing Body: the Salaries Board's proposal, the Dean's letter to Ms Etty, a statement from the external members of the Board endorsing the "commitment, professionalism and integrity which other members of the Board have applied to this Review", and the document 3. Mr Sternberg wrote that, taken together, the documents raised questions about whether there was "some governance failure", and said that they made it obvious that there was "something seriously amiss", that it was the duty of trustees to question what underlay "this series of confusing and contradictory statements", and that this required "as much information as possible". It was for the Governing Body to decide how that was best done.

97. I come to the meeting of the Governing Body on 13 June 2018. Some members of the Governing Body understood that the meeting was about whether the Dean would remain in office: for example, on 12 June 2018 Prof. Belinda Jack had sent an email to Prof. Brian Parkinson in which she said that the meeting was about the Dean's "salary, and by extension, his headship". On the other hand, Prof. Cartwright, although he was to chair the parts of the meeting when the Dean absented himself, had been given no warning of this, either at the meeting of ex-Censors on 11 June 2018 or at any other time. He told me, and I accept, that he had absolutely no idea that the Dean's "headship might come up".

98. The Dean absented himself from the meeting when Salaries Board matters concerning the reviews were discussed. Prof. Cartwright, as the Censor Theologiae, then took the chair, and conveyed to the meeting the Dean's message asking that his thanks be recorded to the

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<sup>41</sup> There was no evidence before the Tribunal whether or not this collection of documents was, and its redactions were, provided to the Dean before the meeting, or indeed at any time.



Salaries Board for their review<sup>42</sup> and acknowledging that it was entirely a matter for the Governing Body whether to accept the recommendations of the Salaries Board. Prof. Judson presented the review, and concluded by reminding Governing Body of the Dean's expressed wish that he had had more time to respond to it and to his suggestion that that the decision might be deferred. Prof. Cartwright then read out the email from Mr Sternberg. The general policies review was approved.

99. After this decision had been made, there was, as is recorded in the minutes, wide-ranging discussion about, inter alia, the correspondence received by the Salaries Board and its timing; Mr Crisp's request to meet the Dean "because of concerns about the Dean's relationship with the Salaries Board"; the Dean's reference in his letter to Ms Etty to achieving "consensus" (which, it was apparently said, was not required as a matter of proper procedure); whether "the correspondence" should be circulated to all members of the Governing Body; and the lack of a grievance procedure for the Dean. There was further discussion whether, as it was minuted, "the matter could be considered closed, or whether there were further governance issues to be explored that had now come to light"; whether the Dean had failed properly to understand "the limits of his role in setting salary policies, and whether he had improperly interfered with the current process of formulating them", and possibly more generally failed to understand "significant governance processes". The minutes then state that, "A proposal was made and seconded for the matters raised to be investigated further", and it was suggested that this be done by a "subset" of the Governing Body, who should report back to the Governing Body at further meeting "within three weeks if possible". Seven members of the Governing Body were identified to serve on what was dubbed "Panel 1", and Prof. Hine was chosen as its "convenor". The remit of Panel 1 was stated in the minutes as being "to consider whether the concerns expressed at the meeting warranted further investigation by a further panel ("Panel 2"), and if so to consider the remit and composition of Panel 2. Panel 1 should decide whether it required further documentation in order to make its recommendation". Standing Orders were suspended to allow the proposal to be considered without the usual notice,<sup>43</sup> and it was put before the meeting as a motion, a vote was taken and it was passed. The meeting then moved on to consider the equal value review.

100. Prof. Hine told the Tribunal that the Governing Body had had "a very complex debate", and that he was "not sure that everyone sort of fully understood what was being engaged there". After the meeting, on 14 June 2018, Prof. Sam Howison sent an email to Prof. Cartwright, saying that he was "not at all sure what happened yesterday", and when Prof. Cartwright simply acknowledged the email with the reply, "Thanks", Prof. Howison sent another email on 17 June 2018, observing that the motion was not restated before the vote had been taken and saying that his question as to what was decided was "a genuine one". Prof. Cartwright acknowledged that he had not restated the motion before a vote was taken and that he should have done so. Prof. Simpson said in his evidence to the Tribunal that he understood the matters to be considered by Panel 1 were both whether the Dean had had

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<sup>42</sup> This clearly referred to the general policies review.

<sup>43</sup> See Appendix 3, para. 2.

proper time to respond to the review and how he had interacted with the Salaries Board over the previous months. Prof. Cartwright considered that the focus, if not the precise remit, of Panel 1 was the concerns raised by Mr Sternberg's email and the matters discussed in the Governing Body after the motion to approve the general policies review had been carried. He later spoke with Ms Etty and suggested to her that, with regard to the minutes of the meeting, she prepare "a regular-length version [of the relevant discussion] which the Panel/Committee (whatever it is called) might find useful in working out what [the Governing Body] decided should be done; as well as a rather short version that will be the formal minute given the sensitivity of what is on the record".<sup>44</sup> After the meeting, the Dean was told by Canon Edmund Newey, the Sub-Dean, that the Governing Body had decided to set up a committee to carry out an investigation and to decide whether another committee should be set up to carry out a further and fuller investigation, but he was confused about how this would work. I am driven to infer that the Governing Body did not make a clear decision about what the precise remit and purpose of Panel 1 should be.

101. The Censors, Dr Brian Young and Prof. Geraldine Johnson, were, unsurprisingly, exercised about the situation. They exchanged emails on 18 June 2018: it is not necessary to quote from them at length, but they were concerned that some wanted "a full putsch" against the Treasurer and Steward, and possibly themselves, as well as the Dean, and they wrote of feeling unable to speak openly to anyone.

102. The Dean was not party to these exchanges, but was clearly aware of the Censors' anxiety. In the days following the Governing Body meeting, the Dean twice spoke with Prof. Foot: on 14 June 2018 while walking round Christ Church Meadow and on 18 June 2018 at the Deanery. On the second occasion, they discussed the difficulties that the Censors were facing, and he spoke of his exchanges with the Salaries Board. In the course of the conversation he referred to Prof. Judson's long tenure as Secretary of the Salaries Board, and that he had had advice about it from Blake Mason.<sup>45</sup> With regard to his own exchanges with the Salaries Board, the Dean told Prof. Foot that he had never been asked to cease from requesting that his remuneration be revised, nor had he been advised that his behaviour was inappropriate.

103. After their second meeting, the Dean sent Prof. Foot an email in which he reiterated that "at no stage in this 'process' was I advised or warned not to write to the Board. ... if I had been told to desist from writing, I would have done so immediately". He also referred to his exchanges with the Salaries Board, and confirmed that he had "accepted the Review". Later, on 18 June 2018, he sent Prof. Foot a note about the tenure of the Secretary of the Salaries Board, which drew upon advice that he had been given by Mr Younger.<sup>46</sup>

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<sup>44</sup> As far as the evidence before the Tribunal goes, in the event only one version of the minutes was prepared. There was no evidence about why the proposal for two versions was abandoned.

<sup>45</sup> See Appendix 6.

<sup>46</sup> See Appendix 6, para. 23.

104. On 19 June 2018, the Dean had a meeting with the Censors, the Sub-Dean and the other Senior College Officers. He was told of concerns about the “poisonous” atmosphere, and of plans to replace (or “get rid of”) him.
105. On 19 June 2018, Dr Young, as Senior Censor, and Ms Etty wrote to Prof. Hine, confirming his appointment as convenor of Panel 1. They referred to it as a panel “to consider the governance implications of matters discussed in relation to” the recommendation that the general policies review be approved, and described its “task” as being “to consider the composition, terms of reference, and timescale of a second Panel – should [Panel 1] believe it to be necessary – which if constituted [would] explore these governance issues in greater depth, and which may make recommendations for action back to the Governing Body”.
106. On the same day, Ms Etty also wrote to the Dean. Her letter to him was less informative about the purpose of Panel 1 than the letter to Prof. Hine had been. She wrote only that it was to consider “any potential governance issues of concern relating to the [general policies review]”. She did not refer to Panel 1’s task being to consider anything about a second panel. She did not say what the “governance implications” were: after all, the general policies review itself had raised matters of governance, including whether the Dean should be on the Salaries Board. The Dean had not been at the relevant part of the meeting and did not receive minutes of it until 3 July 2018.
107. Panel 1 had met on 18 June 2018, and discussed the correspondence between the Salaries Board and the Dean, whether the members of Panel 1 needed to read it and whether it was lawful for them to do so. These questions were discussed with Dr Young and with Mr Lawrie, who was the College’s Data Protection Officer, and it was decided that the members of Panel 1 should read the documents, subject to certain redactions.
108. Prof. Hine read the correspondence himself, so that he knew what he was circulating to others. He took legal advice, and he consulted with Mr Lawrie, as the College’s Data Protection Officer, who was specifically concerned about Mr Crisp’s note: he said that he preferred that the note was not distributed, and said that, if it was, it should be clearly marked that it had not been sent to the Dean for agreement. Prof. Hine wrote to the members of the Panel on 20 June 2018 that he would “find a way of getting you the documentation tonight whatever happens. You may take notes as an aide memoire but you must give them to me afterwards for shredding”.
109. By 22 June 2018 copies of the correspondence had been prepared for distribution. There was no evidence before the Tribunal whether they were the same collection of documents that had been prepared before the meeting on 13 June 2018, or whether the documents were similarly redacted, or whether Mr Crisp’s note was included. On 22 June 2018, Mr Lawrie wrote to the Dean by email and hard copy letter as follows: “I am writing in my role as Christ Church’s Data Protection Officer to advise you that I have been informed that the correspondence between yourself and the Salaries Board has been provided to the members of the panel established by Governing Body of which Dr Hine is Chair. I have

requested that a copy of this material is provided to you at the earliest opportunity". He did not identify more particularly what documents had been provided to Panel 1, whether they had been redacted, who the members of Panel 1 were, or whether any precautions had been taken to ensure that the disclosure did not go beyond Panel 1. Mr Lawrie later telephoned the Dean expressing concern about the implication of sending out the correspondence in terms of the requirements of the General Data Protection Regulation ("GDPR").

110. At some time after 4.00pm on 22 June 2018,<sup>47</sup> the Dean, slipping out of a reception, telephoned Prof. Hine. The background to the call from his point of view was, in summary, that he had been told that a panel had been set up to consider "governance implications" that had been discussed in his absence by the Governing Body on 13 June 2018, and that the Panel had been sent correspondence between himself and the Salaries Board. Without knowing what documents had been sent, he knew that the College's Data Protection Officer was engaged in relation to the regulatory position. He also considered, as he told the Tribunal in evidence that was not challenged, and I accept, that, if the members of Panel 1 read all his correspondence with the Salaries Board, they could not have a complete and balanced picture without also reading other exchanges, which included inflammatory criticisms of Prof. Judson and others, in order to explain the issues that he had raised and his "distrust" of Prof. Judson.

111. In the telephone call, the Dean told Prof. Hine of his concerns about releasing the correspondence to the members of Panel 1, and said that this disclosure would make the College "go nuclear"<sup>48</sup>. He also said that he believed that it would be unlawful. According to Prof. Hine, he also said that he (Prof. Hine) and "the externals" could be "in very serious trouble". Prof. Hine understood that the Dean was threatening to bring legal proceedings against him and, he told the Tribunal, the external members of the Salaries Board. I accept that the Dean might have used words to the effect that there could be "very serious trouble" if there were disclosure in breach of the GDPR, and I also find that as a result of what the Dean said Prof. Hine thought that he personally might well be exposed to legal consequences. With regard to "the externals", I can conjecture that there might have been specific reference to Mr Crisp's note of the meeting on 7 March 2018 and the Dean

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<sup>47</sup> According to the minutes of the meeting of the Governing Body on 17 July 2018, Prof. Hine told the meeting that the telephone call was at 16.52. However, at 16.49 he emailed Prof. Foot and Prof. Ward to tell them that he had just been "threatened with legal action". I infer that either Prof. Hine mis-spoke at the meeting or the minutes are wrong.

<sup>48</sup> I find that the Dean referred to the *College* going nuclear. When others were told of the telephone call by Prof. Hine, they apparently understood that the Dean had said that *he* would "go nuclear": this is what Prof. Foot initially recalled when she gave evidence to the Tribunal, but she then accepted that she was unclear about what exactly she was told. Prof. Cartwright was more certain that Prof. Hine had reported that the Dean had said that he would go nuclear. Whatever version of the telephone conversation Prof. Hine passed on to others, I reject any suggestion that the Dean said that *he* would go nuclear, and Prof. Hine did not give evidence to the Tribunal that he had done so. Moreover, that is not what he wrote to the Dean shortly after they had spoken. The difference between the two versions is of some importance: a reference to the College going nuclear would be about the fallout from the circulation of the correspondence, regardless of what the Dean did; if the Dean had said that he would go nuclear, it would amount to him threatening to take steps that would have dire consequences to the College or members of it or both.



might have said that disclosure of the note, as well as the correspondence, would be unlawful and could lead to serious trouble,<sup>49</sup> but the Prosecutor has not satisfied me that he spoke of the external members specifically (as opposed to the whole of the Salaries Board, including the external members) potentially finding themselves in legal difficulties. More importantly, I conclude that the Dean did not threaten to bring legal proceedings himself. Indeed, in an email later that evening, Prof. Hine said that he *deduced* that he and others would suffer “extremely serious legal challenges from [the Dean]” because the Dean had spoken of the College “go[ing] nuclear”, not that the Dean had threatened to bring legal proceedings. In the telephone conversation, Prof. Hine responded that he reserved his right to circulate the correspondence but would take legal advice before doing so.

112. Shortly after the call, at 17.08 on 22 June 2018, the Dean, having taken some informal legal advice, sent an email to both Prof. Hine and Mr Lawrie. He said that the Salaries Board had a “‘clear duty of confidentiality’ to respect” the correspondence, that it included his “personal data under GDPR”, and that, while the members of Panel 1 would wish to see it, this was not permissible without his consent. He made specific points in support of this contention, and concluded, “I therefore strongly request you reconsider such proposed disclosure and dissemination. At the very least, it would be appropriate to try and agree on a corpus of correspondence that might be set before the panel”.

113. Prof. Hine was clearly alarmed by the Dean’s telephone call. He immediately took legal advice from Penningtons Manches. He called back the correspondence which had been dispatched to members of Panel, and all the copies were recovered unread. He immediately emailed Prof. Foot and Prof. Ward to tell them that he had been “threatened with legal action” and to ask them to telephone him as a matter of urgency. He also spoke with Prof. Simpson and with Mr Lawrie. He sent an email to the Dean at 17.16, in which he said this: “In light of your telephone conversation to me an hour ago in which you said you did not wish the college to ‘go nuclear’, from which I deduce that I and others would suffer extremely serious legal challenges from you, I am not for now circulating the papers you refer to but taking further legal advice”. The Dean replied by email at 17.47, offering to speak with Prof. Hine, while acknowledging that Prof. Hine might not wish this. He wrote that he was as concerned for the College’s reputation as for his own. He observed that “As I said when we spoke earlier, we don’t even have an agreed ‘corpus’ of correspondence to work from, let alone try and redact”. He described the process as feeling “rather like some kind of informal-internal ‘employment tribunal’ of sorts”, and asked to know what he was alleged to have done.

114. On 25 June 2018, the Dean wrote to Prof. Judson: he referred concerns that he had expressed about the conduct of the Salaries Board, both generally and in its conduct towards him. He set out what he regarded as duties of the Board, including one to “respect the private and confidential nature of the correspondence between the Board and those it deals with”, and opined that the Board “acts as a data processor for the purposes of the

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<sup>49</sup> The letter from Mr Lawrie referred to the disclosure of “correspondence”, but apparently the Dean was concerned that the note might well be included because he referred to it in his email to Prof. Hine and Mr Lawrie shortly after the telephone call.



GDPR". He continued, "In my view, the position of the Board with regard to my correspondence is not only unfair and unjustified, but could also be a clear breach of the obligations [to which he had referred]. Correspondingly, I reserve all my legal rights as they relate to the Board's conduct. So that there is no uncertainty, any publication of the correspondence between me and the Board that is marked 'private and strictly confidential' will be regarded as a breach of your duties of confidence. In doing so, I simply remind you of my protest to the Salaries Board in processing my personal data, and in a way not strictly necessary for the Board to fulfil its role as the Board and in full compliance with the Statutes and Bye-laws of the College".

115. Panel 1 was due to meet on 26 June 2018. Before the meeting, on 25 June 2018, the Dean wrote to Prof. Hine that he understood that the Governing Body wished to investigate "a set of issues arising from the Salaries Board Review process", and that he would seek to cooperate fully with the investigation, subject to certain points to which he sought answers before "any process gets underway". They were, inter alia, these: the Dean asked what was the remit of Panel 1 and to see clear terms of reference for it; he asked to know the membership of the Panel and what steps would be taken "to ensure that there are appropriate independent members who are manifestly not conflicted in their consideration of the issues"; and he asked what kind of process would be adopted, and what steps would be taken to ensure that any written report might be agreed by all the parties. He wrote that this last matter would be "particularly important for the re-establishment of trust between all the different parties involved".

116. When it met, Panel 1 decided to take further legal advice. It also decided that a report should be made to the Charity Commissioners of what is termed a "serious incident".<sup>50</sup> It considered that it was too risky for the members of the panel to read the correspondence and that Panel 1 should report to the Governing Body that because of the Dean's threat it could not fulfil its mandate.

117. Panel 1 made a report to the Governing Body dated 2 July 2018. It said that, following interaction between the Dean and Prof. Hine, it had taken the view that Prof. Hine should not circulate to the correspondence to the Panel "at this stage". It explained that in the course of its work it had received a letter from the Dean addressed to Prof. Hine and seen a letter from the Dean addressed to Prof. Judson, from which the Panel had concluded that trust and confidence between the Dean and the Salaries Board had broken down. It also said that it had been advised that, in these circumstances, a report should be made to the Charity Commission. Accordingly, Panel 1 recommended that a further panel be appointed ("Panel 2") with the remit of establishing whether trust between members of Governing Body and the Dean could be re-established through mediation<sup>51</sup> and that Panel 2

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<sup>50</sup> Larger charities (such as Christ Church) must include in their annual return a statement that there have been no serious incidents that should have been reported to the Charity Commission but have not been. Therefore, there is an implicit duty to report such incidents.

<sup>51</sup> It will be noted that the report referred to a breakdown of trust between the Salaries Board and the Dean, whereas the recommendation perhaps implied a wider breakdown of trust. Prof. Hine opined in his evidence to the Tribunal that the members of Panel 1 also felt a lack of trust.

report and, if appropriate, make recommendations to the Governing Body by 29 August 2018. The report recommended five members of Governing Body who should comprise Panel 2: Prof. Hine, Prof. Cartwright, Prof. Foot, Mr Lawrie and Prof. Dirk Aarts, who was the Junior Censor elect.

118. On 2 July 2018, Mr Lawrie wrote to the Charity Commission a letter headed “Urgent Serious Incident Report”, saying that he was authorised to notify the Commission of a serious incident. He reported that at the meeting of the Governing Body on 13 June 2018, “concern emerged over the interaction between the Dean and the Salaries Board over the process for the formulation of policies on the remuneration of Senior College Officers”. He explained that “there appears to have been a serious breakdown of trust between the Dean and the Governing Body of the College”,<sup>52</sup> and that there was “significant concern that if this breakdown of trust were to become public then it is likely to attract significant local and national media attention which could in turn have a negative impact on Christ Church’s reputation”. The Treasurer sent the Dean a copy of the letter.

119. The Dean looked on the website of the Charity Commission to find what constituted a “serious incident”, but found nothing that appeared comparable to what Mr Lawrie reported.<sup>53</sup> He responded by email of 3 July 2018 that he was “not of the view that there has been a breakdown of trust between [him] and the Governing Body”, and that he did not “see this as an ‘urgent serious incident’”.<sup>54</sup> He continued, “Please let me assure you and the Governing Body that I have no intention whatsoever of making this issue public and I would strongly disapprove of anyone who sought to do so. I would hope that a difference of view between senior officers in an Oxford College would not be of wider public interest”.

120. Dr Young wrote to the Dean on 2 July 2018, and told him that Panel 1 was ready “to report on its progress”, and that there would be a meeting of the Governing Body on 17 July 2018 at which the only business would be to continue the discussions about the general policies review and which would therefore be chaired by the Censor Theologiae. He also said that Panel 1 had been asked to report back within three weeks: the Dean had not previously been told this.

121. Prof. Hine also wrote to the Dean on 2 July 2018. He referred to the telephone call on 22 June 2018, and the Dean’s email following it; and wrote that the Dean had said that, if he circulated to Panel 1 the correspondence and “other material”, the College would “go nuclear”, and Mr Crisp, Dr Asquith and he, and also “unspecified others”, would suffer “extremely serious legal consequences”. He said that he had not circulated the

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<sup>52</sup> It will be noted that the letter referred to a breakdown of trust between the Dean and the Governing Body, and not the Salaries Board or some members of the Governing Body. See fn. 56 below.

<sup>53</sup> The Charity Commission published guidance about what constitutes a serious incident, giving such examples as fraud, theft or other significant loss, links to terrorism, having unqualified persons as trustees and abuse of vulnerable beneficiaries. None of its examples is obviously comparable with what was reported by Mr Lawrie, but they are not presented as exhaustive.

<sup>54</sup> I infer that the Dean misunderstood the (unpunctuated) heading to the letter, which presumably was intended to mark the letter “urgent” because it was a Serious Incident Report, rather than to characterise the incident as urgent.

documents, not because he accepted that it would be unlawful to do so but in order to protect himself and others from the threat of legal action. He stated the remit of Panel 1, quoting the wording of the draft minute of the meeting of 13 June 2018,<sup>55</sup> and said that the concerns of the Governing Body that Panel 1 was instructed to consider reflected the general policies review, the Dean's letter of 8 June 2018 to Ms Etty, the statement of the external members for the meeting of 13 June 2018 and document 3.

122. Prof. Hine enclosed a package of correspondence, which, he said, Prof. Judson had redacted "in a slightly different way from the bundle you have previously seen". He wrote "the enclosed redaction is reported to me to have been done in the context of what is necessary and within the remit of Panel 1. I want you to have a copy".

123. The Dean, and other members of the Governing Body, received draft minutes of the meeting of 13 June 2018 on 3 July 2018. Before he received them, the Dean had replied to Prof. Hine in an email dated 3 July 2018. He said that he wanted to check his understanding from Prof. Hine's letter that Panel 1 was empowered to establish Panel 2, and that therefore, if members of Panel 1 were not to be on Panel 2, he had no objection to them seeing the correspondence between him and the Salaries Board, but he would wish to have "some input into that decision". He then wrote, "If the purpose of reference to those papers is for the second panel to consider whether I was afforded adequate time to consider the Salaries' [sic] Board Report, then I am more relaxed. As I read it the sole focus of Panel Two is to decide whether I had sufficient time and to consider the accuracy range and type of information the Salaries Board [sic]. Could you just confirm that my understanding is correct?"

124. The Prosecutor relied on the fact that in this reply the Dean did not refute Prof. Hine's account of threats made by the Dean on 22 June 2018. I was not impressed by this point: in his reply, the Dean was seeking to be conciliatory and, to my mind, it is readily understandable that he chose not to enter into an argument of that kind.

125. Prof. Hine presented the report of Panel 1 to a meeting of the Governing Body on 17 July 2018. He explained why the correspondence between the Dean and the Salaries Board had not been circulated to the members of the Governing Body. According to the minutes of the meeting, he told the Governing Body that, "A Serious Incident Report had been submitted to the Charity Commission to the effect that trust and confidence between the Dean and a part of the Governing Body had broken down".<sup>56</sup> There was discussion of the proposal to establish Panel 2, and it was agreed, as it was put in the minutes, that "Panel 2 were undertaking a forward-looking exercise, to see whether it would be possible to get to a better point, rather than to find fault with past behaviour". The Governing Body accepted

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<sup>55</sup> Sc. "to consider whether the concerns expressed at the meeting warranted further investigation by a further panel ("Panel 2"), and if so to consider the remit and composition of Panel 2. Panel 1 should decide whether it required further documentation in order to make its recommendation".

<sup>56</sup> See fn. 52 above. The letter to the Charity Commission did not refer to a "part" of the Governing Body, but said that "There appeared to have been a breakdown of trust and confidence between the Dean and the Governing Body of the College".

the recommendation of Panel 1 in its entirety, including to the proposed membership of Panel 2. It also agreed that the Governing Body as a whole might need to see the correspondence if Panel 2 thought it necessary. After the meeting, the members of Panel 2 received redacted copies of the Dean's correspondence with the Salaries Board.

126. On 18 July 2018, two members of Panel 2, Prof. Foot and Prof. Hine, sent emails to the Bishop of Oxford. The background was that on 2 July 2018 Prof. Hine had sent an email to the Bishop, stressing that he did so in a personal capacity and not on behalf of Christ Church. He wrote that the Dean might need support and asked the Bishop to let him know if there was anyone close to the Dean who might advise him "that a quiet negotiated and consensual exit may leave him with dignity and the chance to continue his Anglican career". He had said that he wanted to be compassionate. He had forwarded the email to Prof. Foot, who had replied that she entirely agreed. She explained to the Tribunal that this response was intended to endorse Prof. Hine's expressed concern for the Dean and wish to behave with compassion, rather than a desire to bring it about that the Dean left Christ Church.
127. On 17 July 2018 Prof. Foot had been asked by Panel 2 to tell the Bishop that the Panel had been established in order to enter into mediation. When she saw him in the morning of 18 July 2018, she had only started to read the Dean's correspondence with the Salaries Board. Later that day, she sent an email in which she said that, having finished reading it, she was "struck repeatedly by the measured politeness of the letters from the Board", and "by how sharply their tone differs from that of the other party". She went on to say, "It is true that the [Salaries Board] never actually told [the Dean]: 'stop writing', although repeated letters from the Board make it clear that they do not consider that there are issues still to be discussed. But the externals did advise him to cease: their (disputed<sup>57</sup>) note of their meeting makes that clear. So his statement to me that 'no-one ever told me to stop' is factually incorrect"<sup>58</sup>. The following day, on 19 July 2018, Prof. Foot forwarded her email to the Bishop on to Prof. Judson and Prof. Simpson.
128. I make two observations about this email. Firstly, Prof. Foot was describing to the Bishop the correspondence that she had received in confidence. It is true that she does not directly quote from it, but she both described its tone and referred to its content. Secondly, the note made by Mr Crisp of the meeting did not say that Dr Asquith and he had advised the Dean to desist from writing: on the contrary, they said that "the ongoing discussions must be conducted in a calmer way ...". There was no reason to conclude that the Dean's statement that he had not been told to desist was "factually incorrect", and I find that it was correct.
129. In his email to the Bishop of 18 July 2018, Prof. Hine wrote that, at a meeting that evening, Panel 2 had been worried about the Dean's "psychological well-being and whether the balance of his mind could cope with what is happening". He referred to the Dean's

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<sup>57</sup> In fact, the marking on the note was that it had "not been agreed by the Dean", not that he disputed it

<sup>58</sup> Here Prof. Foot was referring to her conversation with the Dean on 18 June 2018 and his subsequent email.



“likely continued reluctance to engage”. He told the Bishop that a reading of the correspondence led all the members of Panel 2 to “the same bleak assessment of what it does for trust and confidence”. There was no evidence before the Tribunal of a proper basis for concern about the Dean’s mental health. Again, in my judgment, the confidentiality of the correspondence was compromised, albeit in more general terms than by Prof. Foot’s disclosure.

130. At around this time, on 20 July 2018, an interview with the Dean was published on a blog on the Cathedral’s website. The Dean spoke in it of the work and numerous meetings that his position required. He said that it was necessary to have a “theology of meetings” and remarked that they do not always go well. He continued, “... you have to remember that you’re playing a long game here, and the aftershocks of some meetings take a long time to resolve. I like the writings of an Indian Jesuit, Luis Bermejo, who says that there are four stages in institutional life: communication, conflict, consensus, communion. Bermejo says that the Holy Spirit is in all four stages, and that you can’t have consensus and communion until you have had conflict. You can see this in the church: nobody sat down on a wet Thursday afternoon and said, ‘Done and dusted with the creeds. We’re all agreed’. Frankly it’s a bitter, in fact *violent*, fight for the creeds for decades. So conflict in itself is not bad .... It can be very helpful. Which is not to say that it’s easy and it’s certainly not painless”. (original emphasis)

131. On 24 July 2018, Christ Church and the Dean entered into a mediation agreement with a Queen’s Counsel as mediator. The Dean maintained that Panel 2 never had a sincere intention of reaching an agreement through the mediation whereby he might remain in office, and he put before the Tribunal evidence of exchanges that, on their face, would appear to show that some members of the Governing Body wanted him replaced or thought it inevitable that he would have to leave. I do not need to consider that evidence or to make findings about the Dean’s contention in order to determine whether the charges are proved, and I shall not do so.

132. Mediation began on 27 July 2018. Before it, on 26 July 2018, Prof. Hine wrote to Prof. Simpson that “In addition to the clear misdemeanours involved in [the Dean’s] behaviours in relation to the [Salaries Board], and his threats to sue, I want some illustrations in my back pocket just in case I need to illustrate to the mediator [the Dean’s] wider incompetence especially where it borders on manipulative behaviour”. He went on to say that the Dean was “in fighting mood”, and said that to seemed “to want to put the Blake Morgan [documents] on the table, amazingly. ... we think that we can turn it against him we think quite powerfully”.

133. Prof. Simpson sent a long email in reply, and copied it to Prof. Judson. He wrote: “The correspondence with the [Salaries Board] is the last straw – but there have been others. It is this particular correspondence that ultimately led to an irredeemable breakdown of trusts and confidence, because the Dean has acted in the manipulative way that he does ... all in the context of a plain conflict of interest concerning his own remuneration. These, we think, the Charity Commission, were it to see the



correspondence, would rightly regard as plain sacking offences. There is no way back from them". He then said "But there is a wider pattern of behaviour too that has become of grave concern to the college side of the institution", and explained and developed this point at some length.

134. Three members of Panel 2 attended the mediation on 27 July 2018, Prof. Hine, Prof. Foot and Mr Lawrie.<sup>59</sup> It did not result in a resolution, but a second day of mediation on 14 September 2018 was planned. On 29 July 2018, Pennington Manches, on behalf of the Christ Church, wrote to Messrs Blandy & Blandy, who were advising the Dean,<sup>60</sup> setting out terms of a proposed settlement that would have involved the Dean resigning by 1 September 2018. On 30 July 2018, the Dean left for the Far East (on Collegiate business, followed by a holiday), not returning to the United Kingdom until 15 August 2018.
135. After his return, on 17 August 2018, the Dean, through Blandy & Blandy, rejected the proposed terms. The Dean arranged to have a meeting with Dr Young that afternoon, and, to the Dean's surprise, he arrived with the Treasurer. They were concerned (as Mr Lawrie told the Tribunal and as I accept) that, as they understood, the Dean had failed to respond to the settlement proposals, and they wanted to emphasise to him how serious the position was. Although Mr Lawrie was a member of Panel 2, he did not consider that he was acting in that capacity in meeting the Dean, and indeed he was unsure whether or not Prof. Hine knew about the meeting. He had, however, given the meeting careful consideration, and had consulted Penningtons Manches.
136. Mr Lawrie told the Dean that Panel 2 had formed a clear view that it was in the interest of the College that he leave as soon as practicable, and warned him that, unless an agreement was reached, Panel 2 would so report on 29 August 2018. Dr Young said that, if the Dean refused the proposed settlement, he was aware that a formal complaint would be submitted. Mr Lawrie recalled in his evidence to the Tribunal that the Dean said that the mediation process was going forward, and that he needed time to take advice. The Dean disputed that, although he accepted that he might have said that the mediation was still afoot. I accept the Dean's evidence about that. The Dean also said that the manner adopted by Mr Lawrie and Dr Young was forceful and threatening. I accept that, while this was probably not intended, it was the impression that they gave and, in view of the uncompromising message that they sought to deliver, could hardly have been avoided.
137. On 21 August 2018, the Dean wrote a letter to all members of the Governing Body, and his personal assistant, Ms Sarah Hope, circulated it.<sup>61</sup> To summarise what he wrote, he recognised that he had a responsibility "for repairing relationships", and said that he was "fully committed ... to the process of rebuilding trust and confidence". He offered to be

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<sup>59</sup> The mediation process was subject to an agreement that it would be kept confidential, but all the parties to it, including the mediator, have agreed to disclosure for the purposes of this Tribunal.

<sup>60</sup> The College had agreed to meet the Dean's legal fees for the mediation and subsequent legal advice with a view to achieving an agreement.

<sup>61</sup> The Dean initially asked Ms Etty to do so. There was evidence before the Tribunal about why she did not do so, but it is, to my mind, inconsequential.

available on 29 August 2018, when Panel 2 was due to report to the Governing Body, to answer any questions that members might have for him. He said that he realised that he had caused some members of the Governing Body upset and distress, and apologised. He set out suggestions as to how “we can firmly focus on the best interests of the House, and work in a harmonious and constructive way”.

138. Panel 2 did not report to the Governing Body by 29 August 2018, but, through an email from Ms Etty, required an extension until 13 September 2018 “to allow consultations to conclude”. When it reported on 13 September 2018, the Panel said that, having read the correspondence with the Salaries Board and correspondence between the Dean and Blake Morgan and in view of how the mediation meeting proceeded, it did not believe that “trust and confidence can be restored”. It identified these considerations:
- Evidence of the Dean’s “threats in correspondence to ask the Charity Commission or other external agencies to investigate the operation of the Salaries Board”.
  - The Dean’s “attempts to remove from office the Secretary of the Salaries Board during the period when he, the Dean, was actively seeking a major increase in salary”.
  - That “Panel 1 had been unable to investigate whether there were concerns about the interaction between the Dean and the Salaries Board, and the fact that the Dean had sought to prevent disclosure of the correspondence which would have allowed Panel 1 to perform the tasks given it by Governing Body”.
  - That the Dean had made threats that he would “go nuclear” and that he would take legal action against individual members of Governing Body, which Panel 2 believed were made in order to prevent Panel 1’s investigation.
  - The SIR.

139. The report said that Panel 2 had nevertheless hoped to reach a satisfactory resolution with the Dean through mediation, but were “deeply disappointed” when, before the mediation could be completed, the Dean wrote his letter of 21 August 2018 to the members of the Governing Body. They considered that this “terminated the mediation process”, but that the Panel “elected not to accept the mediation had effectively ended”, but sought discussions outside the mediation to give the Dean more time to consider his position. However, when on 12 September 2018 the Dean, through Blandy & Blandy, repeated the position adopted in the letter of 21 August 2018, Panel 2 concluded that “no agreement is currently possible”.

140. Panel 2 also concluded that “the time has come to share with Governing Body the confidential material (suitably redacted), which has so far only been seen by certain trustees, together with other relevant documents. It attached to its report, inter alia, correspondence between the Dean and the Salaries Board, together with Mr Crisp’s note, correspondence between the Dean and Blake Morgan and related papers, and “correspondence between the Dean, Mr Lawrie, Professor Hine and Professor Judson during the period that while Panel 1 was in existence and at the time that Panel 2 was being established”, which, I take it, comprised the exchanges of 22 and 25 June 2018.

141. The Panel reported that it understood that a formal complaint had been prepared. On 17 September 2018, Prof. Hine, as the Senior ex-Censor, received a complaint against the Dean signed by seven members of the Governing Body. A meeting of the Governing Body planned for 26 September 2018 was cancelled, and its business was carried over to the meeting on 3 October 2018, to which I have referred.
142. By letter dated 7 November 2018, Prof. Cartwright, who was then the Senior ex-Censor of Christ Church, suspended the Dean from his duties, and the suspension is still in place.<sup>62</sup>
143. As I have said, I was appointed by letter to hear and determine the matter by letter dated 8 November 2018. Reference was made before the Tribunal to two steps taken by the Dean in about March 2019. First, the Dean brought proceedings in the Employment Tribunal against Christ Church, presenting complaints of “whistle-blowing detriment” under sections 47B and 48 of the Employment Rights Act, 1996 and of discrimination on the grounds of religion or belief under the Equality Act, 2010. Secondly, the Dean, through his solicitors, wrote to the Charity Commission, inter alia about the Employment Tribunal proceedings. I need not say anything about these matters, except that I consider that they do not materially bear upon anything that I have to decide.

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<sup>62</sup> By Statute XXXIX.46, where a complaint has been referred to a Tribunal, “the Senior ex-Censor, after consulting the Governing Body ... and the Chapter exclusive of the Dean, may, if he or she considers that [Christ Church] might otherwise suffer significant harm, suspend the Dean from his or her duties without loss of salary”.

Appendix 6: Advice from Blake Morgan and Mr Sam Younger.

1. The Dean is criticised in relation to advice that he sought in the academic year 2017/2018 from Blake Morgan LLP, who are a firm of solicitors with offices in Oxford and elsewhere, and Mr Sam Younger, who was the Chief Executive of the Charity Commission until 2014. I should first introduce two matters about which he sought advice.
2. First, the tenure of the Secretary of the Salaries Board: Statute VIII provides that the Salaries Board shall consist of "the Dean, four Official Students and three persons who are not members of the Governing Body". By-Law 24 states the membership of the Board more specifically, and provides that it is to consist of the Dean, the Senior Censor, Secretary of the Salaries Board, "two Official Students to be elected annually" and three external members. It also provides that, "The elected members who are Official Students shall be eligible to serve for five years; such member who has served for five years shall not be re-eligible for two years".
3. By-Law 42 provides that certain College Officers, including the Secretary of the Salaries Board, "shall be elected by the Governing Body at its meeting in the eighth week of Trinity Term each year, and shall take office from the following 1<sup>st</sup> August". It goes on to provide that "The Secretary of the Salaries Board shall be elected from amongst the Official Students".
4. These provisions give rise to a question of construction: whether the office of Secretary of the Salaries Board is subject to the restriction on eligibility of service to five years. The Dean so interpreted them. On the one hand, it might be argued that Secretary of the Salaries Board is (i) an Official Student and (ii) elected to his office. The contrary argument is that the expression in By-Law 24 "elected members who are Official Students" is intended to refer to, and only to, the "two Official Students to be elected annually". It is not necessary for me to express a view about which interpretation is to be preferred, and I do not do so. It is sufficient for present purposes to have explained the nature of the question.
5. The second matter is what codes and other published guidance applied to Christ Church. I have sufficiently described these publications in Appendix 3 at paragraph 19.
6. In Michaelmas Term 2017, both Censors made it known that they found Prof. Judson difficult to work with, not least on the Academic Committee and the Finance Committee (of which he was a member ex officio Secretary of the Salaries Board). I do not need to set out their emails but their criticism was forcefully expressed. Prof. Foot confirmed in her evidence to the Tribunal that she had been at meetings where she had observed poor relations between them. The Academic Registrar, Ms Tesh, found Prof. Judson "rude and unpleasant" by the time that she was coming to the end of her time at Christ Church before retiring in December 2017, and believed that he so treated her because she worked closely with the Dean and the Censors.

7. There was discussion between the Dean and Dr Young in the Michaelmas Term, 2017 about whether Prof. Judson should continue as the Secretary of the Salaries Board. The Dean spoke to Prof. Cartwright about the appointment of the office, and Prof. Cartwright pointed him to By-Law 42 and the annual election: he confirmed this in an email dated 15 November 2017. The Dean passed this on to Dr Young in an email also of 15 November 2018, in which he floated an idea of moving Prof. Judson to the position of Censor Theologiae in Hilary Term 2018, when Prof. Cartwright, the incumbent in that office, would be on sabbatical leave. As is apparent from an email that he sent to Prof. Simpson, by 17 December 2017 Prof. Hine had come to understand that the Dean wanted Prof. Judson “out of the Sec Salaries Board role”, attributing this to the Dean’s belief that thereby he would improve his chances of increasing his pay.<sup>1</sup>
8. The Dean thought that it might be helpful, in view of this and other concerns that he had about governance, to take some advice from outside the College, and in November 2017, through a friend, he approached Mr Sam Younger, who was willing to speak with the Dean without charging a fee. He made it clear to Mr Younger that the approach was made on a confidential basis, and Mr Younger assured him that he would respect the confidence. He did not identify the educational charity about which he wished to speak (and so, in communicating with Mr Younger, he described members of the Governing Body as “Governors”), but, while the Dean is a trustee of a number of other charities, some ex officio the office of Dean, it strikes me as unrealistic to suppose that Mr Younger would not have had, at the least, a shrewd idea that the Dean was seeking advice about Christ Church.
9. The Dean sent Mr Younger a note of the three matters which he wished to discuss, against a background that the charity was “basically well run”: the office of Secretary of the Salaries Board, the appointment of “Governors” to positions in the charity for which they received additional remuneration, and concern that “Governors” appeared “generally ignorant of their legal obligations and compliance issues in their field”. With regard to the first matter, he told Mr Younger that, as far as he could tell, the position had been held by the same “Governor” for around 25 years.<sup>2</sup> He said that there were “some issues with the current Secretary of the Salaries Board, - and these are mostly ones of ‘unconscious bias’”. He gave examples, and concluded this part of the note as follows: “... I would like some advice in this case on whether there is a good case – best practice, or simply a technical legal point – for introducing a new system in which no-one can serve as Secretary of the Salaries Board beyond a set period ...”.

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<sup>1</sup> See Appendix 5, para. 18.

<sup>2</sup> In fact, Prof. Judson had been in the office since 2008, but the Dean was presenting what he described to the Tribunal as “an anonymised case study”.



10. Mr Younger spoke with the Dean by telephone on 28 November 2017 and introduced him to a recent governance code of which the Dean had been unaware.<sup>3</sup> He met the Dean on 7 December 2017, and told him that the matters that he had raised should be addressed.
11. Blake Morgan are solicitors whom Christ Church has consulted over the years, but the Dean was never aware of this or had forgotten it. They had also, perchance, acted for the Dean and his wife before 2018 in respect of conveyances and testamentary matters. On 25 January 2018, the Dean happened to meet a Ms Sara Thompson, a solicitor with Blake Mason who specialised in employment matters and acted for charities, including Oxford colleges. She offered to speak with the Dean, and on 11 February 2018, he took her up on an offer of what he understood would be free advice. They arranged to speak on 14 February 2018, and before they did so the Dean sent her a "briefing paper" dated 13 February 2018.
12. In the first nine paragraphs of the note, the Dean described the history of his request for a review of his pay, and also requests in respect of the Treasurer and the Steward, the latter being said to be "on a matter of an emerging gender-pay-gap". He said that on 1 November 2017, the Salaries Board had not considered the stipends of the Treasurer and the Steward. He referred to his letter of 12 December 2017, and said that he had "[s]ubsequently ... discovered that the Salaries Board at [the] meeting ... introduced specious information on the discussion of the Decanal salary", giving as an example the relationship between the pay of the Archbishop of Canterbury and that of the Head of Investment of the Church Commissioners. He referred to his letter of 20 December 2017, and wrote that, having received no reply, he "re-sent the letter in early January". He said that, when he had been told in a letter of 14 January 2018 that the Board had taken account of the provision of living accommodation by way of the Deanery, he "wrote to express [his] real concern that the accommodation ... was being used as a means of taxing or reducing [his] stipend", and suggested that this represented an "unlawful deduction" of stipend.
13. In the tenth and final paragraph of the note, the Dean said that he had written to "one or two senior colleagues" about the operation of the Salaries Board and in particular the role of the Secretary. He also said that there had been no performance review of the Board and that it did not comply with Codes, which required "the Board to publish, in [the] annual accounts, methods and reasoning for determining" Senior College Officers' pay.
14. When Ms Thompson telephoned the Dean on 14 February 2018, she told him that Blake Morgan acted for Christ Church and that therefore she could not give him any advice about his own employment. She said, however, that Blake Morgan could give advice to Christ Church, through the Dean, about what came to be called the "macro issues" (as opposed to the "micro issues", that is to say issues about his own employment), but since they concerned questions of charity law, rather than employment questions, her colleague, Mr Ben Brice, who specialised in education and charity law, was better placed to advise than

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<sup>3</sup> It was not clear from the evidence what code this was. It might have been an updated version of the Charity Governance Code for Larger Charities.

she was. She introduced Mr Brice to the Dean on a speaker telephone, and shortly afterwards she sent the Dean an email to confirm that she has passed the Dean's document to him.

15. Neither Ms Thompson nor Mr Brice mentioned that they would charge for the advice, and no engagement letter was sent. The Dean told the Tribunal that he thought that they would not charge for giving him advice. There was no sound basis for him to believe this, but I accept that he genuinely did so.
16. The Dean spoke with Mr Brice on the telephone on 20 February 2018. Mr Brice gave advice that related to the so-called macro issues. He spent most of the call explaining various codes and guidance said to apply to Christ Church. There was also brief discussion about the tenure of the Secretary of the Salaries Board: Mr Younger agreed that there was a tension between By-Law 24 and By-Law 42, but expressed the view that it would have been right for Prof. Judson to have stepped down after five years, and he considered that this would have been good practice.
17. On 2 March 2018, following a meeting in which the Censors had expressed concern that Prof. Judson was having a damaging effect on their ability to do their jobs and on the College more generally, the Dean wrote them an email about the By-Laws relevant to on the tenure of the Secretary of the Salaries Board. The Dean did not refer in the email to having been advised by Mr Brice, but the evidence of the Dean to the Tribunal was, and I accept, that he was drawing upon the discussion on 20 February 2018. The Censors responded that they would "need to think carefully about how to pull the pin on this particular by-law grenade". I do not set out more of their responses, but they apparently shared the Dean's concern about Prof. Judson's continuing tenure as Secretary of the Salaries Board.
18. On 21 March 2018, the Dean wrote to Dr Asquith and Mr Crisp referring to published codes and guidance.<sup>4</sup> Again, he did not mention in the letters that he had been advised by Mr Brice, but the evidence of the Dean to the Tribunal was that he was drawing upon the telephone discussion on 20 February 2018, and I accept that. In a draft of this letter, the Dean wrote a response to Mr Crisp's email of 8 March 2018<sup>5</sup> about the tenure of the Secretary of the Salaries Board, again, as I infer, drawing on his discussion with Mr Brice, but this passage was not included in the version that was sent. On 13 March 2018, the Dean had sent the draft to the Censors for their comments, and they advised him to omit this passage. They thought that it was "very helpful for [them] to have the Charity law, statutes, etc information but given that [the Dean was] currently in negotiations (if not in outright dispute) with the [Secretary of the Salaries Board] it could be construed as inappropriate for [the Dean] to suggest, even to the externals, that it is time for him to step down". They thought that, for procedural and political reasons, it should be for them, as the Censors, to "move forward on this".

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<sup>4</sup> See Appendix 5, para. 61.

<sup>5</sup> See Appendix 5, para. 56.

19. Dr Young was still concerned about Prof. Judson in April 2018, and he continued to express his concern to the Dean. The Dean decided to seek further advice from Mr Younger, and they arranged to meet on 24 April 2018. In preparation for the meeting, on 20 April 2018 the Dean sent him on a note which reflected in part the passage of the draft letter to Dr Asquith and Mr Crisp which had been excised from the final version. This time, he made clear to Mr Younger that he was seeking advice about Christ Church. In the note, the Dean set out relevant provisions of the Statutes and By-Laws, and an argument that the five-years restriction applied to the office of Secretary of the Salaries Board, and therefore Christ Church had not complied with it. He referred to the Charity Guidance Code for further support for the view that there should be a change of Secretary. He also suggested that a female should be elected to the Salaries Board and, when a vacancy arose for an external members of the Salaries Board, there should be nominated someone who was "proficient in HR", had experience of "working in the charity and/or educational sector", and was not an alumnus and so would bring a "fully 'external' eye to the Board". The last paragraph of the note read as follows: "As Head of House, I have a clear duty of care to ensure our good governance. And for that reason, the current Secretary of the Salaries Board will need to be replaced at the end of this academic year. The composition of the Board will be different in the new academic year to be compliant with best practice as outlined in current charity law".
20. Before the meeting planned for 24 April 2018, Prof. Johnson asked the Dean whether he could find "the full text of Charity legislation regarding 'term limits' for salary board secretaries and externals (and for that matter, for internals too)". The Dean sent an email to Mr Younger seeking help to respond, asking whether it was "right to query a fellow ... sitting on the Salaries Board as Secretary for well over a decade".<sup>6</sup> He also asked about the tenure of other members of Salaries Boards. Mr Younger replied that, while a "legalistic" argument might possibly be made that the Charity Guidance Code did not apply to sub-committees, its spirit was "clearly that the principle of limited terms and regular refreshing should apply across all governance bodies. My view is that the only exception would be people who are on governance bodies ex officio". The Dean forwarded Mr Younger's reply under cover of an email "see below from Sam". However, when it was forwarded, it had two additions in parentheses: a reference to specified paragraphs of the Charity Governance Code for Larger Charities and at the end, after the words "ex officio", the following: "(That would be the Dean and the Senior Censor in your case.)".
21. In his evidence to the Tribunal the Dean accepted that he might well have added the parentheses to Mr Younger's email, and that he would have done this "for clarification", possibly after a telephone conversation with Mr Younger. However, the additions were presented to Prof. Johnson, and so indirectly to Dr Young, to whom Prof. Johnson forwarded the Dean's email, as if they were written by Mr Younger as part of his own email. This does seem to me a distinctly odd way to conduct correspondence, and it misrepresented to the Censors the exchanges with Mr Younger. It was contended by the Prosecutor that the

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<sup>6</sup> This was an exaggeration, or possibly it might be said that the Dean was positing a more extreme example of long tenure. Prof. Judson had served for some nine months beyond a decade.

Dean had made the additions, and had done so in order to assist him to persuade the Censors of his own view about the tenure of Prof. Judson as Secretary of the Salaries Board, but this too would be odd: from the documents that were put before the Tribunal, it would seem clear that they did not persuade of that. Further, this would not explain the parenthesis about the paragraphs of the Code. I find that the Dean did make the additions: I cannot conceive of any alternative explanation for them. I also find that it was a misleading to forward the email with the additions and without any explanation that they had been made. However, I conclude that the Dean was not intending to mislead in order to advance his own interests, or to influence the Censors to a view which they did not hold or to a course of action that they would not otherwise have been minded to take.

22. Prof. Johnson replied that it appeared that “our first focus” should be on Christ Church’s Statutes and By-Laws. The Dean met the Censors on 23 April 2018 and there was further discussion of Prof. Judson’s tenure. The Censors preferred to deal with the matter themselves, and without the Dean being involved. That evening, the Dean sent them a copy of his note to Mr Younger, listing in his covering email the risks that the Dean perceived in such a long term of office.
23. At their meeting on 24 April 2018, Mr Younger gave advice to the Dean, which he conveyed by email to the Censors. He said that Mr Younger had advised:
  - That, on the proper interpretation of the Statutes and By-Laws, the restriction on tenure to five years applied to the Secretary of the Salaries Board, although Christ Church might seek to change or suspend the By-Laws;
  - That, in terms of reputation or public relations, he thought it very unwise and risky to have the same person in the role for over ten years;
  - That public and press scrutiny would soon turn to Oxford colleges, and the matter should be dealt with quickly; and
  - That, if there were resistance to changing the Secretary of the Salaries Board, “a simple request to the [Charity Commission] would prompt an investigation, the result of which is not in doubt”.
24. The Dean added that he could “also update [the Censors] on informal opinion from Blake Morgan, who (sic) I was in touch with ages ago, but by coincidence got in touch again today”.
25. As is reflected in the Dean’s email, Mr Brice of Blake Morgan had written to the Dean on 24 April 2018. After asking about Salaries Board’s general policies review, he referred to his fees, acknowledging that he had not discussed them previously. He said that his preparation for the telephone call and the call itself had taken a little under two hours, and he proposed a fee of £500, plus VAT. The Dean replied that neither the so-called “macro” nor the “micro” issues were resolved, and that he would go back to Mr Brice if they were not, commenting “That is likely, I think – but later during June, or possibly late May”. By separate email, he sent Mr Brice a copy of his note for Mr Younger, explaining that he was

taking advice from the Charity Commission,<sup>7</sup> together with the email to the Censors identifying perceived risks in Prof. Judson holding the office for so long. He wrote to Mr Brice that he was “welcome to comment, of course, on the attached (in strict confidence, naturally)”.

26. Although the Dean had understood that Blake Morgan would not be charging for their advice, he thought that it had been useful and agreed to the proposed fees. He told Mr Brice that he would need to check the procedure for arranging payment.
27. That evening, the Dean spoke to Dr Young about Blake Morgan’s fees while they were travelling together from a dinner in London by train. Dr Young said that he would arrange to have them paid. It was suggested by the Prosecutor that the Dean dealt with question of Blake Morgan fees in a way that was “unbusiness-like” and suspicious. I reject that submission: it seems to me that he simply ascertained the mechanics for having them paid at his first opportunity to speak to Mr Young after his email exchange with Mr Brice.
28. On 1 May 2018, the Dean sent an email asking that the invoice be sent to Dr Young, as Senior Censor. Blake Morgan sent an invoice dated 30 April 2018<sup>8</sup>, and Dr Young authorised for it to be paid from the College’s Academic Operations budget for legal and professional advice. Dr Young provided a copy of the invoice to Prof. Simpson, who in turn showed it to Prof. Judson. The invoice is curious in that it is headed “General Employment Advice 2015/16”: it cannot relate to advice in 2015 or 2016. The description of the work was this: “for the period to 30 April 2018 to include advice in relation to best practice guidance of regulators in relation to manner by which salary reviews might be conducted”.
29. I have referred elsewhere<sup>9</sup> to the exchanges between the Dean and Prof. Judson about the legal advice that had been obtained from Blake Morgan.
30. On 25 July 2018, the Treasury received and Mr Lawrie saw the invoice from Blake Morgan, payment of which had been authorised by Dr Young. Mr Lawrie telephoned Christ Church’s client partner on 26 July 2018 to ask for details of the work done. Blake Morgan supplied details on 26 and 31 July 2018, including a note of the telephone attendance on the Dean. It was dated 2 February 2018, but that must have been an error. The matter to which it related was stated to be “Employment”. It was headed “Salary review best practice”. It stated this: “Explained best practice guidance in setting salaries, as per Charity Commission guidance and draft [Higher Education] Remuneration Code .... procedure for setting salaries should enable appropriate and justifiable level of remuneration, procedural fairness, transparency and accountability. Noted difficult position of [Martyn Percy] as Dean –

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<sup>7</sup> In fact, he was not in contact with the Charity Commission. He must have been referring to Mr Younger.

<sup>8</sup> In his evidence to the Tribunal Mr Lawrie referred to an invoice from Blake Morgan of 8 April 2018, but no invoice of that date has been produced, and it is difficult to think that an invoice was sent before Mr Brice’s email of 24 April 2018. I can only conclude that Mr Lawrie was in error, and that Blake Morgan rendered a single invoice dated 30 April 2018.

<sup>9</sup> See Appendix 5, paras 82, 83, 87 and 88.



confirmed advice directed to college as opposed to [Martyn Percy] personally – advised necessary for salaries committee to manage conflicts of interest appropriately”.

## Glossary.

**Document 3** is a note from the Salaries Board, drafted by Prof. Judson and Prof. Simpson and put before the meeting of the Governing Body of 13 June 2018.

**External linkage** refers to the relationship between the remuneration of the Dean, or another officer of Christ Church, and remuneration paid to other Oxford Heads of House, or others outside Christ Church.

**External members** means the members of the Salaries Board who are not also members of the Governing Body.

**General policies review** refers to a review in relation to the policies relating to remuneration of Senior College Officers (the Dean, the Development Director, the Steward and the Treasurer) that the Salaries Board decided to conduct on 19 February 2018.

**Internal linkage** refers to the relationship between the remuneration of the Dean, or another officer of Christ Church, and another officer (or other officers) of Christ Church.

**Macro issues** refers to questions about which the Dean sought advice from Blake Morgan that related to College Governance rather than his own position or remuneration.

**Micro issues** refers to questions about which the Dean sought advice from Blake Morgan that related to his own position or remuneration rather than College Governance.

**Panel 1** refers to a working group of members of the Governing Body set up pursuant to a decision of the Governing Body on 13 June 2018.

**Panel 2** refers to a working group of members of the Governing Body set up pursuant to a decision of the Governing Body on 17 July 2018.

**Senior College Officers** refers to the Dean, the Development Director, the Steward and the Treasurer.

**SIR** means "Serious Incident Report" to the Charity Commission.



## THE CHARGES

The charges are that, by reason of each of the matters under the headings 1-7 below ("the Matters"), there is good cause for the Dean's removal from office, on the grounds that the Matters are, and each of them is variously:-

(1) conduct of the Dean of an immoral, scandalous or disgraceful nature incompatible with the duties of the office or employment; and/or

(2) conduct of the Dean constituting failure or persistent refusal or neglect or inability to perform the duties or comply with the conditions of office or employment,

as set out in Statute XXXIX.5. (a)(ii) and (iii) respectively.

The Matters are as follows. "The Complaint" means the complaint against the Dean of 17<sup>th</sup> September 2018.

### **The Matters**

#### **1 Trust and confidence**

(1) By reason of each of the Matters under headings 2-7 below, trust and confidence in the Dean has been irretrievably lost and/or has irretrievably broken down, as has the working relationship between the Dean and the Governing Body ("GB").

(2) For the avoidance of doubt it will be contended that:-

(a) the Matters were a sustained course of unacceptable conduct by the Dean, carried out over a considerable period of time, and directed at the GB, bodies/committees of the GB, and individuals;

(b) many members of the GB including the 7 signatories to the Complaint, have lost all trust and confidence in the Dean;

(c) by reason of this, prior to the Dean's suspension, working relationships broke down and Christ Church became or was rapidly becoming ungovernable, and would become so were he to be re-instated;

(d) if the Dean were to remain in post the functioning of Christ Church would be likely to be very severely impaired.

#### **2 Matters concerning the Salaries Board ("the Board")**

In about July 2017 the Dean requested that the remuneration of his office should be reviewed as he was entitled to do. The following relate to the manner in which he pursued his request.

(1) Without cause, the Dean impugned the work and/or integrity of, the Board Secretary, in particular in his letters to the Board Secretary of 14<sup>th</sup> January 2018 and to the Censor Theologiae of 17<sup>th</sup> January 2018.

(2) Without cause, the Dean impugned the work of the Board, in particular in his letters to the Board Secretary of 14<sup>th</sup> January 2018, 26<sup>th</sup> February 2018, 21<sup>st</sup> May 2018 and 1<sup>st</sup> June 2018, to the Censor Theologiae of 17<sup>th</sup> January 2018, and to Dr Asquith of 21<sup>st</sup> March 2018.

(3) Without cause, the Dean impugned the independence of the Board's external members, in particular in his letter to the Board Secretary of 1<sup>st</sup> June 2018.

(4) The Dean proposed repeatedly and insistently to the Board and/or its members and/or the Board Secretary the considerations which he contended should be taken into account in reviewing his remuneration and/or the policy to his remuneration which it/they should adopt, in particular in his letters to the Board Secretary of 14<sup>th</sup> January 2018, 26<sup>th</sup> February 2018, 21<sup>st</sup> May 2018 and 1<sup>st</sup> June 2018, to the Censor Theologiae of 17<sup>th</sup> January 2018, and in his emails to the Senior ex-Censor (and Chair of Panel 1: see below) of 20<sup>th</sup> July 2017.

(5) The Dean repeatedly threatened or intimated that he would or might not carry out part of his role as Dean should his remuneration expectations not be met, in particular in his letters to the Board Secretary of 17<sup>th</sup> December 2017 and 21<sup>st</sup> May 2018, and in his letter to the Censor Theologiae of 31<sup>st</sup> January 2018.

(6) The Dean repeatedly threatened inappropriately to take matters of policy concerning the setting of his own remuneration outside Christ Church which would risk bringing it into disrepute, in particular in his letters to the Board Secretary of 14<sup>th</sup> January 2018 and 1<sup>st</sup> June 2018 and to the Censor Theologiae of 17<sup>th</sup> January 2018.

(7) The Dean repeatedly acted in a threatening and bullying manner towards the Board, and especially the Board Secretary, in particular in his letters to the Board Secretary of 17<sup>th</sup> December 2017, 20<sup>th</sup> December 2017, 14<sup>th</sup> January 2018, 26<sup>th</sup> February 2018, 21<sup>st</sup> May 2018, 1<sup>st</sup> June 2018 and 7<sup>th</sup> June 2018, and in his email to the Board Secretary of 8<sup>th</sup> March 2018. The Dean's conduct towards the Board Secretary amounted to harassment.



(8) The Dean without justification called into question wider aspects of the proper governance of Christ Church and criticised the culture of the institution, in particular in his letters to the Board Secretary of 26<sup>th</sup> February 2018 and 1<sup>st</sup> June 2018, and in his briefing paper to Blake Morgan of 13<sup>th</sup> February 2018 and his communications with Blake Morgan of April 2018.

(9) The Dean sought to bypass proper governance mechanisms while subject to a conflict of interest by reason of the matters in 2(1)-(8) above.

### **3 Matters relating to a meeting of the GB on 13<sup>th</sup> June 2018 (“the First GB Meeting”)**

(1) The Dean’s letter to the Secretary to the GB of 8<sup>th</sup> June 2018 sought to give and/or gave a misleading impression that:-

(a) the Dean had had insufficient time to consider and respond to proposals made in a paper presented to the GB by the Board entitled “Review of Salaries Board policies on the remuneration of Senior College Officers” (“the Review”), when in fact he had had time to do so; and/or

(b) the Dean was willing to accept the Review as it stood if the GB wished to do so, when in fact he was not willing to do so, as shown in particular by his email to the Senior Ex-Censor of 3<sup>rd</sup> July 2018.

(2) The Dean sought to give and/or gave the GB a misleading impression of his involvement in the work of the Board over the prior months, by reason of the Matters in 3(1)(a) above, and by seeking to persuade the Board not to show to the GB the Board Correspondence (as defined in the Complaint).

### **4 Matters concerning the operation of panels of the GB known as Panel 1 and Panel 2 (as defined in the Complaint)**

(1) The Dean showed a serious lack of awareness and/or judgment in seeking confirmation from the Chair of Panel 1, in his email to the Chair (and Senior Ex-Censor) of 3<sup>rd</sup> July 2018, that the role of Panel 1 was solely to decide whether the Dean had had sufficient time to consider the Review before the First GB meeting and to consider the accuracy, range and type of information before the Board.

(2) The Dean sought to prevent Panel 1 from carrying out the tasks assigned to it by the GB, and from having a full picture of his prior actions and communications, by seeking to prevent it from seeing the Board Correspondence, in particular by his emails to the Chair of Panel 1 and the Treasurer of 22<sup>nd</sup> June 2018 (17.08 and 17.47),

by a telephone discussion with the Chair of Panel 1 shortly before sending the first of those emails, and by his letter to the Board Secretary of 25<sup>th</sup> June 2018.

(3) The Dean communicated with the Chair of Panel 1 in ways which led the latter to conclude that the Dean was threatening him and others with legal proceedings, in particular by his email to the Chair of Panel 1 and the Treasurer of 22<sup>nd</sup> June 2018 at 17.08 and in a telephone discussion with the Chair of Panel 1 immediately before it was sent, and by his letter to the Board Secretary of 25<sup>th</sup> June 2018.

#### **5 Matters concerning the Serious Incident Report to the Charity Commission ("SIR")**

(1) The Dean showed a serious lack of judgment in not recognising that the subject matter of the SIR merited a SIR and/or in characterising it as a difference of view between senior officers in his email to the Treasurer of 3<sup>rd</sup> July 2018.

(2) The Dean wrongly stated in his email to the Treasurer on 3<sup>rd</sup> July 2018 that he had no intention of making the issues leading to the SIR public, when he had threatened to inform third parties about ] them, as evidenced by the Dean's letters of 14 January 2018 to Lindsay Judson, 17 January 2018 to Edwin Simpson and 1 June 2018 to Lindsay Judson. It has become known since the complaint and in the course of this Tribunal process that the Dean informed Sam Younger about them in November 2017.

#### **6 Matters concerning Blake Morgan**

(1) The Dean obtained legal advice from Blake Morgan at least partly in relation to his own personal interests, namely the level of his remuneration, in and around the period from February to April 2018, yet procured Christ Church to pay for the entirety of the advice.

(2) The Dean wrongly represented that the advice he had obtained from Blake Morgan related only to an interpretation of Christ Church's Statutes and by-laws, when it did not, and that he had taken the advice in relation in the interests of good governance, when he had not. This is evidenced in his letter of 7<sup>th</sup> June 2018 to the Board Secretary.

(3) The Dean failed to comply with a request from the Board Secretary in the latter's letter to him of 8<sup>th</sup> June 2018, made in the light of the Dean's assertion that the advice was taken on behalf of Christ Church, that the Dean send him a copy of the questions which the Dean had put to Blake Morgan, and the advice which he had received as a result.

(4) In his briefing paper to Blake Morgan of 13<sup>th</sup> February 2018 ("Briefing Paper"), the Dean did not present an even handed briefing about the remuneration policies which Christ Church should adopt in that:-

(a) it focussed principally and/or disproportionately on the issue of the Dean's remuneration;

(b) contrary to paragraph 1 of the Briefing Paper, the Dean did not mention what he termed the "gender pay-gap" until his letter to the Board Secretary of 14<sup>th</sup> January 2018;

(c) contrary to paragraph 2 of the Briefing Paper, the Board did consider the linkage between the salaries of the Treasurer, the Steward and the Director of Development, and gave consideration to the Treasurer's salary, as was set out in the Board's minutes of 1<sup>st</sup> November 2017 and as was referred to in the Board Secretary's email to the Dean of 1<sup>st</sup> November 2017;

(d) in paragraph 3 of the Briefing Paper the Dean stated that he had "discovered" that on 1<sup>st</sup> November 2017 the Board had relied on information which he termed "specious" (about the pay of the Archbishop of Canterbury and of the Church Commissioners' Head of Investment), thereby suggesting that this information was in some way hidden, when in fact it was recorded in the minutes of the meeting;

(e) in paragraph 6 of the Briefing Paper the Dean stated that he had had no reply to his letter to the Board Secretary of 20<sup>th</sup> December 2017 asking for an explanation of his remuneration being as he put it "below par" and that he had therefore had to re-send the letter in early January, without explaining in the Briefing Paper that his letter of 20<sup>th</sup> December had stated, "I would be grateful for a reply next month";

(f) contrary to paragraph 8 of the Briefing Paper, the Board's taking account of the provision of accommodation to the Dean did not amount to "a means of taxing or reducing" his stipend, nor did the Board Secretary's letter to the Dean of 11<sup>th</sup> January 2018 say this.

(5) The Dean's note to Sam Younger, attached to the Dean's email of 23<sup>rd</sup> April 2018 to Geraldine Johnson and Brian Young, did not present an even-handed briefing about the remuneration policies which Christ Church should adopt, in that it criticised the Board but did not mention that the Board was engaged in a review of the Dean's own remuneration or that the Dean had been told by two external

members of the Board that they thought that he was putting inappropriate pressure on members of the Board.

(6) In seeking external advice from Blake Morgan, and from Sam Younger, in particular about the Dean's contention (in the final paragraph of his note to Sam Younger) that the Board Secretary "will need to be replaced at the end of the academic year", the Dean was acting without authority from the GB, in particular given that the advice of Christ Church's law tutors had been obtained on this issue and they had given views which were not to the Dean's satisfaction, and given further that the matters which the Dean raised (if they remained contentious) were the proper subject of consideration by Christ Church's Statutes and By-Laws Committee and/or General Purposes and Strategy Committee and not for determination by the Dean.

#### **7 Matters concerning the letter from the Dean to members of the GB of 21<sup>st</sup> August 2018 ("the Open Letter")**

(1) By the Open Letter the Dean sought to circumvent, and/or circumvented, the procedure which the GB had put in place to deal with the governance concerns which had arisen, in that the GB had created Panel 2 (through Panel 1) to mediate with the Dean, yet by the Open Letter the Dean addressed the entire GB directly on how these governance concerns should be resolved.

(2) By the Open Letter the Dean sought to minimise, and/or minimised, especially in the minds of those (being the majority of the GB) who had not read the Board Correspondence, the seriousness of the issues of loss of trust and confidence arising from his actions.

(3) By the Open Letter, the Dean showed a lack of awareness of and/or judgment about the seriousness of the issues of loss of trust and confidence arising from his actions.

(4) The Dean showed a lack of awareness of and/or judgement of the damage which the Open Letter might do to the GB's attempts to respect the confidentiality of the Board Correspondence.

In contending that the Matters and each of them variously is/are such conduct, and without prejudice to the generality and width of Statute XXXIX.5.(a)(ii) and (iii), it will be contended amongst other matters that the Dean acted:-

In breach of:-

As regards charge (1) (trust & confidence)

No additional duties are relied on. The case is that the Dean has the “duties” and “conditions” imposed on him by the Statutes (i.e. superintendence, being most senior member of GB and chairing meetings). To undertake those roles adequately he has to have the trust and confidence of the GB. His conduct, as charged in charges 2-7, broke that trust and confidence. Because it broke trust and confidence, this was conduct which was “incompatible with the duties of the office” and/or conduct constituting “failure or inability to perform the duties or comply with the conditions of the office”.

as regards charges 2-7

- his duty of single-minded loyalty to the foundation;
- not to place himself in a position where his duty to the foundation and his interest would or might conflict;
- not to act for his own benefit or the benefit of a third person without the informed consent of the foundation;
- not to disclose the foundation’s confidential information;
- to act in good faith to the foundation;
- not to make a profit out of the foundation (this referring only to the BM fees).



